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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 549

JOHN A. HANNAH, ET AL., APPELLANTS

vs.

MARGARET M. LARCHE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

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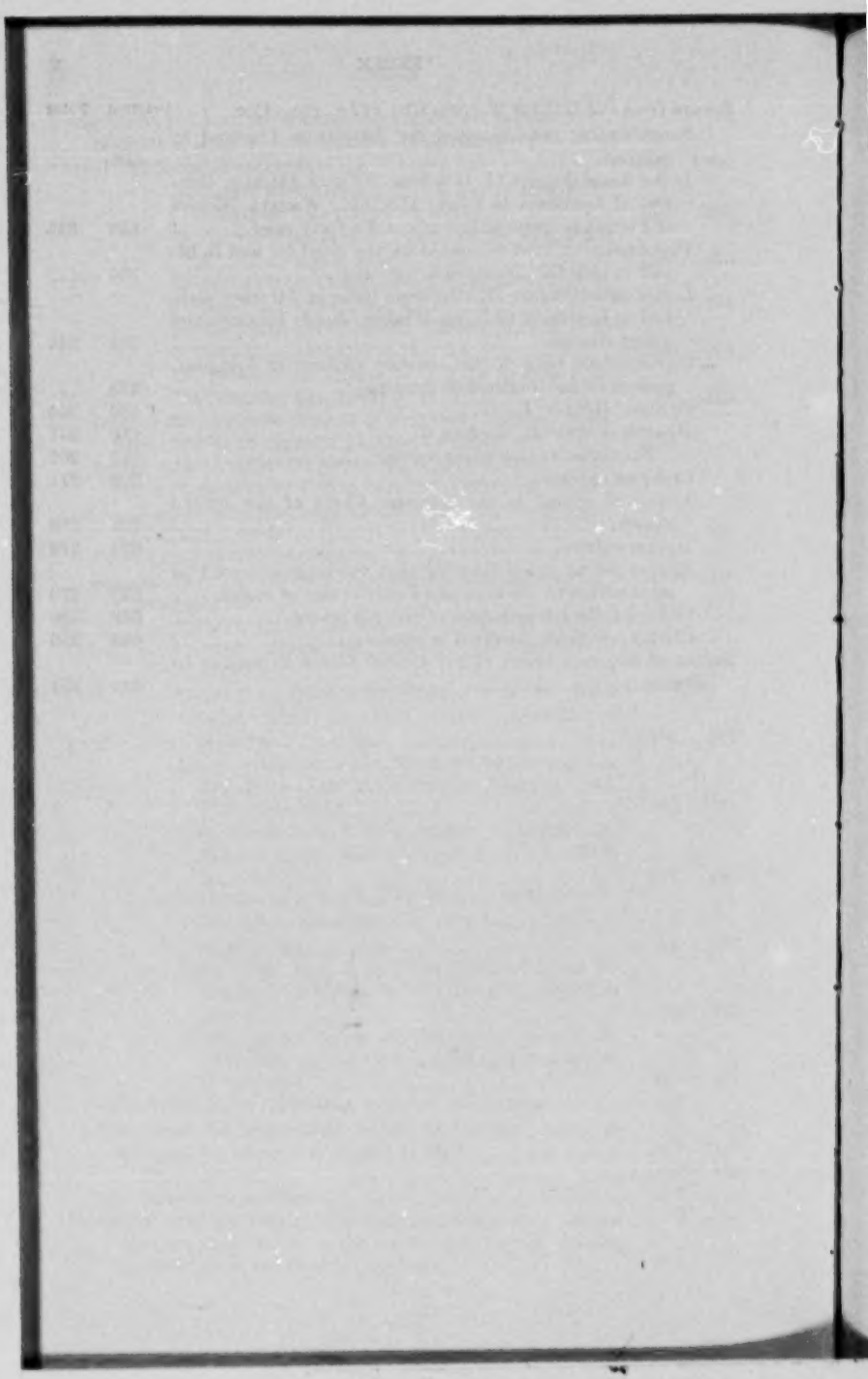

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1 In the United District Court for the Western District of Louisiana

Civil Action No. 7479

SHREVEPORT DIVISION

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSIONS OF CIVIL RIGHTS

[File endorsement omitted.]

To the HONORABLE JUDGE Ben C. Dawkins, Jr., Judge of the United States District Court in and for the Western District of Louisiana:

Complaint

Filed July 10, 1959

The complaint of:

(1) Mrs. Margaret M. Larche, a resident of the Parish of Morehouse, State of Louisiana, and the Registrar of Voters for said Parish;

(2) Mrs. Mae Lucky, a resident of the Parish of Ouachita, State of Louisiana, and the Registrar of Voters for said Parish;

(3) Curtis M. Thomas, a resident of the Parish of Washington, State of Louisiana, and the Registrar of Voters for said Parish;

(4) Mrs. W. P. Clements, a resident of the Parish of Webster, State of Louisiana, and the Registrar of Voters for said Parish;

(5) Mrs. Mary K. Bryce, a resident of the Parish of Bossier, State of Louisiana, and the Registrar of Voters for said Parish;

(6) Mrs. Lannie L. Linton, a resident of the Parish of Claiborne, State of Louisiana, and the Registrar of Voters for said Parish;

(7) Mrs. Pauline A. Culpepper, a resident of the Parish of Bienville, State of Louisiana, and the Registrar of Voters for said Parish;

(8) Sidney W. Platt, a resident of the Parish of DeSoto, State of Louisiana, and the Registrar of Voters for said Parish;

(9) Cecil E. Manning, a resident of the Parish of East Carroll, State of Louisiana, and the Registrar of Voters for said Parish;

(10) Miss Katherine Ward, a resident of the Parish of Madison, State of Louisiana, and the Registrar of Voters for said Parish;

2 (11) B. W. Berry, a resident of the Parish of Tensas, State of Louisiana, and the Registrar of Voters for said Parish;

(12) Henry Earl Palmer, a resident of the Parish of East Feliciana, State of Louisiana, and the Registrar of Voters for said Parish;

(13) Thomas W. Thompson, a resident of the Parish of West Feliciana, State of Louisiana, and the Registrar of Voters for said Parish;

(14) Mrs. Estelle Wilder, a resident of the Parish of Jackson, State of Louisiana, and the Registrar of Voters for said Parish;

(15) Joseph Walton Crawford, a resident of the Parish of Red River, State of Louisiana, and the Registrar of Voters for said Parish;

(16) Johnie L. Kelly, a resident of the Parish of Caldwell, State of Louisiana, and the Registrar of Voters for said Parish (See footnote [1]) appearing herein individually and in their respective capacities as Registrars of Voters of the State of Louisiana for their respective Parishes, hereinafter referred to as "Complainants", to-wit:

JURISDICTION

This is a suit of a Civil nature between complainants hereinabove named and the following defendants:

"John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan;

"Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas;

---

[1] U. Charles Mitchell, a resident of Caddo Parish, Louisiana, and Registrar of Voters for said Parish, was served on July 9, 1959 and joins as a complainant.

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"John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia;

"Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana;

"Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida;

"George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C.,"

all of whom are defendants herein in their individual capacities and as the duly qualified acting and sworn members of the Commission on Civil Rights created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42:1975 et seq.

3 This action arises under the Constitution of the United States of America and, more particularly, under Article I., Section 2, and Amendments IV., V., and VI., thereto as hereinafter more fully appears.

The jurisdiction of this Court is also invoked under title 28 of the United States Code, Sections 1331, 1332, 2282, 2284, this being a Civil action at law and in equity arising under the Constitution and Laws of the United States and wherein the matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars exclusive of interest and cost.

Jurisdiction is also invoked under Title 42, Section 1985, United States Code, being, an action in which citizens of the United States contend that they have, are now, and threaten to continue to be denied, equal rights under the Constitution and Laws of the United States and deprived of their Civil rights as citizens of Louisiana and the United States all by a conspiracy in violation of the Constitution and Laws of the United States.

INJUNCTIVE RELIEF

The jurisdiction of this Court is also invoked under rule 65 of the Federal rules of Civil Procedure, this being an action for injunctive relief both temporary and permanent to enjoin and restrain persons acting under color of statutes, ordinances, regulations, customs, or usages of the United States from subjecting or causing to be subjected, citizens of the United States to the deprivation of rights, privileges or immunities secured by the Constitution and Laws of the United States.

This action is further brought to obtain a declaratory judgment under the provisions of Title 28, U.S.C.A. 2201 for the

purpose of determining a question in actual controversy between the parties hereto or a justiciable controversy between the parties hereto relating to the effect of Title 42, U.S.C.A. 1975 et seq., which complainants contend is unconstitutional and void under the Constitution of the United States because it, (a) deprives complainants of the equal protection
4 of laws (Amendment XIV., Constitution); (b) denies complainants of the right to be informed of the nature and cause of accusation against them, to be confronted with witnesses against them, and to have compulsory process for obtaining witnesses in their behalf (Amendment VI., Constitution of the United States); (c) in that no person shall be compelled in any criminal case to be a witness against himself (Amendment V., Constitution); (d) because it encroaches upon the rights reserved to the State of Louisiana, (Amendment X., Constitution), and (e) that said Act is beyond the jurisdiction of Congress and is unconstitutional (Amendment IX., Constitution), and (f) that said Act is not appropriate legislation within the meaning of Section (2) of the XV. Amendment of the Constitution, and

(2) to obtain a temporary restraining order, interlocutory injunction, and a permanent injunction, restraining and prohibiting defendants, their agents, servants, employees or anyone else acting in concert with them, from enforcing, or attempting to enforce against complainants or others similarly situated any of the provisions of Public Law 85–315, 85th Congress, 71 Stat. 634, Title 42 U.S.C.A. 1975, et seq.

1

5 Between the approximate dates of June 29, 1959 and July 6th, 1959, Complainants were each served by a United States Marshal or Deputy United States Marshals with what purports to be subpoenas and restraints, and containing commandments to bring certain records and documents before the Commission on Civil Rights of the United States of America on July 13, 1959, at 9:00 o'clock a.m. in the United States District Court Room, United States Post Office Building, 424 Texas Street, Shreveport, Louisiana; that said subpoenas further commanded Complainants each to appear before said Commission at the time and place herein stated and bring with them the records named therein; all of which will more

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fully appear from the copies attached hereto and made a part hereof.

2

Complainants have not been informed as to the nature of the complaint or complaints against them and no evidence has been disclosed to your Complainants of any complaints nor have your Complainants been assured that they will be confronted with complaining witnesses.

3

Complainants specifically allege that the Commission on Civil Rights, through its duly authorized agents and representatives has repeatedly informed the Attorney General of the State of Louisiana, in his official capacity as the legal advisor of each complainant herein, by verbal and written communications, that said Commission would, under no circumstances, furnish complainants with, or permit them to examine, the written complaints required by Section 104(a)(1) of the Civil Rights Act of 1957, 42 U.S.C.A. 1975c(a)(1), upon which this investigation is alleged to be based, nor would it divulge the name or names of the accusers who attested to these secret complaints. Complainants annex hereto and make a part hereof the following copies of written communications received by the same Attorney General of Louisiana from the said agents of the Commission:

6 "1. Letter dated April 14, 1959 from Gordon M. Tiffany, Staff Director, Civil Rights Commission, addressed to Mr. W. M. Shaw, Attorney for complainant, Mrs. Lannie E. Linton; copy of which was directed to the Attorney General of Louisiana, which copy has been marked exhibit 'A' for identification.

"2. Telegram dated May 29, 1959 from Gordon M. Tiffany, Staff Director, Civil Rights Commission addressed to Hon. Jack P. F. Gremillion, Attorney General of Louisiana which copy has been marked exhibit 'B' for identification."

4

The above referred to resolution of the Commission on Civil Rights, is arbitrary, particularly but not exclusively, for the reason that the Commission has failed to divulge the name of any complainants against any actions of any Registrar and in

failure to set forth, the facts and circumstances surrounding such complaints. Said actions are not authorized by any valid or constitutional law.

5

Complainants, therefore, allege that they are citizens of the United States of America and of the State of Louisiana and that their inalienable rights as such have been and are being violated by the acts of the individuals named hereinabove in attempting to force them to testify and produce documents and records before them under the guise of legality, when, as a matter of fact, no such authority does or can exist in these individuals, separately or collectively.

6

Complainants are duly appointed and qualified Registrars of Voters in their respective parishes, State of Louisiana, in accord with the existing statutes and laws of the State of Louisiana and are now, and have at all times, complying with the statutes and laws of the State of Louisiana.

7 7

Complainants further show that the provisions of L.R.S. 18:92 and 18:94 designate records of the Registrar as public records and names the persons who may inspect and copy the same and set forth procedure, and that the defendants herein have not qualified or complied therewith.

8

The subpoenas or commandments to appear and produce records, documents, etc., above described are in direct violation of Louisiana statutes and laws, namely Revised Statutes 18:169, and Revised Statutes 18:251, in that such records, books, etc. are prohibited from being removed from the Office of the Registrar of Voters except "upon an order of a competent court" which your complainants respectfully allege is not a description of the Commission on Civil Rights as it is not a competent court under the statutes of Louisiana or of the United States of America.

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9

Your complainants further show that irreparable damage will be done to them in that Revised Statutes 18:221 sets forth the penalty provision of anyone violating the sections previously cited of the Louisiana Revised Statutes, Title 18, and making it a criminal offense to violate any provision of Title 18 and fixing the penalty at not less than $100.00 nor more than $500.00, "and imprisoned for not less than ninety days nor more than six months."

10

Complainants show that in a mimeographed document attached to the subpoenas or commandments to appear, appears "Rules of Procedure for hearings of the Commission on Civil Rights" in which appears the following:

8 "3 (i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel", the Registrars of Voters thus summoned are deprived of their constitutional right of cross-examination.

11

Complainants allege that these defendants collectively and separately are acting in an ultra vires manner in (1) attempting to force complainants to testify at such proposed hearing without first advising them of the nature of any complaint or complaints existing; (2) without allowing complainants to be confronted by complaining witness; (3) for not allowing complainants to have counsel to fully represent their interest in such hearing; (4) for not allowing cross-examination of complaining witnesses; and (5) in causing irreparable damage to your complainants and commanding each of them to voluntarily violate the statutes of the State of Louisiana and thus be subject to criminal prosecution and ultimate discharge from their respective positions as Registrars of Voters for their respective Parishes of the State of Louisiana, for the reasons hereinabove set forth.

12

That the said Act creating the Commission on Civil Rights, particularly, Section 102(h) in part provides that the Com-

mission is the sole judge of the pertinency of testimony and evidence adduced at its hearings. Such provision is invalid in that it violates constitutional rights and privileges granted under the Constitution of the United States to the said Registrars of Voters.

13

Complainants show that the Congress of the United States was without authority to delegate to the Commission authority to hold executive sessions and clothing the Commission on Civil Rights with authority to determine that evidence adduced in such sessions could or could not be released in public sessions without the consent of the said Commission. As hereinabove set forth such procedure or determinations would do violence to the constitutional right of Registrars to be confronted with witnesses against them, accompanied by facts and circumstances surrounding the complaints.

9

14

In connection with the preceding allegations, complainants either some or all of them, but all of them through their counsel, the Attorney General of Louisiana, have been advised that sworn complaints in writing have been made against all of said Registrars who are the complainants herein, and as hereinabove set forth the said Commission and its agents have refused to reveal the name of any complainant against said Registrars and have refused to reveal the nature of any complaint, all without any legal authority.

15

Complainants further show that the Commission on Civil Rights is an administrative commission and that any hearing conducted by it must be based upon specific grounds and statements of fact, as held in Jones v. S.E.C., 98 U.S. 1, 26–28, 80 L. Ed. 1015, 1026–27.

16

The proposed hearing to be held in Shreveport, Louisiana, on July 13, 1959, is not based upon any specific statement of fact revealed in any of the subpoenas served upon the Registrars and therefore, violates their constitutional rights.

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Complainants show that the proposed hearing, above referred to, is doubtless designed to foster the interest of some alleged applicant or applicants for registration under Louisiana law without affording any Registrar of Voters any opportunity of knowing the facts and circumstances surrounding the complaint; the effect of which is to supplant State law, which affords full opportunity for the protection of the rights of any applicant for registration. The case of United States v. Raines, et al., Advance Sheets of Federal Supplement, 172 F. Supp. 552, held that the Act of Congress delegating such authority to the Commission on Civil Rights was unconstitutional, and complainants show that the Acts of the Commission in connection with said hearing are without foundation in law, and that the Act is unconstitutional.

18

Complainants further show that compliance with the subpoenas, in their present forms, would make necessary the complete closing of the Registrars of Voters offices involved during the hearing and a deprivation of the rights of any eligible applicant for registration to become a registered voter of this State during the time of the closing of the Registrar offices or the removal of their records during said hearing. Neither the Congress of the United States nor the Commission on Civil Rights is authorized to bring about such a result.

19

Complainants allege that defendants, and each of them while acting in their official capacities as set out hereinabove acted in concert and engaged in a common design, have in the past conspired and are now conspiring with each other, to deny complainants their rights and privileges as citizens of the State of Louisiana and of the United States; that the defendants and each of them while acting in concert and engaged in a common design with each other, have in the past conspired, are now conspiring and threaten to continue to conspire together with each other to deny and deprive complainants of their right to be

confronted by their accusers, to know the nature and character of the charges made against them and official complaints lodged with the Civil Rights Commission, to force them to violate the laws of the State of Louisiana and their oath of office as officials of the State of Louisiana, to deprive them of their constitutional prerogative of immunity from testifying
11 against themselves, all in violation of Article I., Section 2, and Amendments I., IV., V., and XVII. of the United States Constitution and 42 U.S.C. 1985.

20

Complainants are now and threaten to continue to be greatly harmed, damaged, and injured by the wrongful, knowing and purposeful acts of the defendants and each of them, and they have no plain, adequate or efficient remedy at law to redress the wrongful, knowing, and purposeful acts of defendants other than this action for injunctive relief, that any other remedy to which they could be remitted would be attended by such uncertainties and delays as to amount to a substantial denial of relief, would involve a multiplicity of suits and would cause complainants irreparable harm and injury and occasion them undue hardship, vexation and delay, and that injunctive relief is necessary in the premises, that such relief is even necessary, prior to a hearing because of the present and continuing irreparable injuries being suffered by your complainants, and that your complainants will suffer irreparable damage during the pendency of this action unless a temporary restraining order is granted, without notice and before hearing, enjoining and restraining defendants, their agents, servants, employees and attorneys from enforcing or attempting to enforce the said provisions of Public Law 85-315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq., as concerns complainants herein and others similarly situated.

Wherefore, Complainants pray:

(1) That a temporary restraining order and judgment issue herein immediately and without notice in accordance with law upon defendants enjoining and restraining defendants from:

(a) requiring any testimony from or the production of any records by complainants herein at the hearing scheduled
12 July 13, 1959, at Shreveport, Louisiana, or any subsequent hearing which may be called or scheduled by de-

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fendants herein until such time as defendants have furnished or caused to be furnished to complainants copies of the charges and/or sworn complaints, together with the names and addresses of the person or persons making the charges or filing the sworn complaints upon which charges and/or sworn complaints the scheduled hearing is alleged to be based and until such time as complainants have had reasonable time to examine, study and investigate the furnished information above described and requested and until such further time as Louisiana law permits your complainants to produce and transport voting registration records to places other than the official domicile and office of registrar of voters, and

(b) from conducting any hearing pursuant to the rules and regulations adopted by defendants, a copy of which rules and regulations is attached to and made a part of this complaint, as well as conducting any hearing pursuant to the resolution adopted by defendants of date March 14, 1959, a copy of which resolution is attached to and made a part of this complaint.

(c) conspiring together with themselves or with any other person or persons to deny complainants their rights and privileges as citizens of the State of Louisiana and of the United States or to deny to complainants their right to be confronted by their accusers, to know the nature and character of the charges made against them, or to deprive them of counsel, or to force them to violate the laws of the State of Louisiana and their oath of office as officials of the State of Louisiana,
13 or to deprive complainants of their constitutional prerogative of immunity from testifying against themselves, all in violation of Article I., Section 2, and Amendments I., IV., V., VI., and XVII. of the United States Constitution and 42 U.S.C. 1985.

(2) That a three judge Court be convened pursuant to the provisions of Title 28 of the United States Code, Sections 2282 and 2284.

(3) That this Court declare and adjudge, by declaratory judgment, that Public Law 85–315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq., is unconstitutional, void, and ineffective in its entirety and without force of law, and that complainants are not required to comply with or be subjected to the terms and provisions thereof.

(4) That the defendants, and all of them, their agents, servants, employees and attorneys, be restrained and enjoined

by order of this Court, temporarily during the pendency of this action, and permanently after the final hearing from attempting to enforce the provisions of the aforesaid Act, namely, 71 Stat. 634, 42 U.S.C. 1975 et seq. against complainants or others similarly situated.

(5) That meanwhile, and until the hearing and determination of the application for a preliminary injunction as aforesaid, by a temporary restraining order, as provided in Section 2284 (3) of Title 28 of the United States Code, to prevent immediate, great and irreparable injury, loss or damage to complainants herein which will result as aforesaid, before notice can be served and a hearing had upon the application for a preliminary injunction, the said defendants, their agents, servants, employees and attorneys be restrained and enjoined from enforcing, attempting to enforce or from proceeding under the provisions of the said Public Law 85-315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq. as concerns complainants herein and others similarly situated.

14

(6) That this cause be advanced on the docket of this Honorable Court and set for a speedy hearing according to law, and upon such preliminary hearing that a temporary injunction issue enjoining and restraining defendants, their agents, servants, employees, successors in office and those acting in concert with them from the several acts and under the same terms and conditions as prayed for in paragraph 1 of this prayer.

(7) That upon final hearing of this cause upon its merits this Honorable Court enter a permanent injunction that will enjoin and restrain the aforesaid defendants, their agents, servants, employees, successors in office and all persons acting in concert with them forever from the several acts and under the same terms and conditions as prayed for in paragraphs 1 and 2 of this prayer.

(8) That this Honorable Court allow complainants to recover costs incurred herein and grant any other orders or relief which may appear fitting, proper or just in the premises whether the same is based upon the preliminary hearing prayed for or the trial of the case on its merits.

By attorneys:

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
2201 State Capitol, Baton Rouge, Louisiana.

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15 George M. Ponder,
GEORGE M. PONDER,
First Assistant Attorney General,
State of Louisiana, 2201 State Capitol,
Baton Rouge, Louisiana.

Of counsel:
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New Orleans, Louisiana.
JOHN E. JACKSON, Jr.,
New Supreme Court Building,
New Orleans, Louisiana.
WILLIAM P. SCHULER,
New Supreme Court Building,
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Beck Building,
Shreveport, Louisiana.
FRANK J. LOONEY, Sr.,
Shreveport, Louisiana.
LOUIS H. PADGETT,
Bossier City, Louisiana.
ALBIN P. LASSITER,
Courthouse, Monroe, Louisiana.
FRED JACKSON,
Homer, Louisiana.
WILLIAM SHAW,
Homer, Louisiana,
Attorney for Mrs. L. L. Linton.

16 THOMPSON L. CLARKE,
St. Joseph, Louisiana.
CAMERON C. MINARD,
Columbia, Louisiana.
LESTER HUGHES,
Natchitoches, Louisiana.
RICHARD H. KILBOURNE,
Clinton, Louisiana.
FRANCE WATTS,
Franklinton, Louisiana.
J. REUEL BOONE,
Many, Louisiana.

17 *Exhibit "A" to Complaint*

APRIL 14, 1959.

DEAR MR. SHAW: The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

Having considered the same, the request was denied by the following statement adopted by the Commission:

"The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

GORDON M. TIFFANY,
Staff Director,
For the Commission on Civil Rights.

MR. W. M. SHAW,
Meadors, Shaw & Meadors,
South Main Street, Homer, Louisiana.

A true copy of original received by me.

W. M. SHAW,
Meadors, Shaw & Meadors,
South Main St., Homer, La.

18 *Exhibit "B" to Complaint*

P WXM059 LONG GOVT DL PD—TX WASHINGTON DC 29 259 PME—

THE HON JACK P. F. GREMILLION, ATTY GENERAL OF LOUISIANA—DEPT OF JUSTICE BATON ROUGE LA—MAY 29 PM 236

ACKNOWLEDGING YOUR LETTER OF MAY 28, YOU COMMENT THAT CERTAIN QUESTIONS IN THE INTERROGATORY ARE OBJECTIONAL BECAUSE IMMATEIAL AND IRRELEVANT, THAT OTHERS ARE CONTRARY IN LAW. AS COUNSEL TO THE REGIS-

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TRARS AND FOR THE PURPOSE OF THIS INTERROGATORY SUCH OBJECTIONS MAY BE NOTED BY YOU IN THE REPLY. QESTIONS OF MATERIALITY, RELEVANCY AND OTHER OBJECTIONS WILL BE CONSIDERED ALONG WITH THE COMPLETED ANSWERS BY THE COMMISSION IN DETERMINING THE NECESSITY OF A HEARING. THE INTERROGATORIES COVER SPECIFIC ALLEGATIONS OF THE COMPLAINTS RECEIVED BY THIS COMMISSION. SUCH ADDITIONAL QUESTIONS AS APPEAR IN THESE INQUIRIES ARE SUBMITTED BY THE STAFF OF THE COMMISSION AS RELEVANT TO OUR STATUTORY DUTIES.

AT NO TIME HAS THE COMMISSION AGREED TO FURNISH THE SPECIFIC COMPLAINTS OR INFORMATION WHICH DIRECTLY OR INDIRECTLY WOULD DISCLOSE THE IDENTIFY OF COMPLAINANTS. IN THIS REGARD WE CALL YOUR ATTENTION TO THE ACTION OF THE COMMISSION AS NOTED IN MY LETTER OF APRIL 14TH, ADDRESSED TO ATTORNEY WILLIAM SHAW, A COURTESY COPY OF WHICH WAS ADDRESSED TO YOU.

WE APPRECIATE YOUR CONTINUED COOPERATION AND WE TRUST THAT THE COMPLETED INTERRORGATORIES WILL BE RECEIVED IN THIS OFFICE BY JUNE 55. SINCERELY—

GORDON M TIFFANY STAFF DIRECTOR

A true copy of original telegram received by undersigned July 10, 1959.

JACK P. F. GREMILLION,
Attorney General of Louisiana.

19 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA,
Parish of Morehouse:

Before me, the undersigned authority in and for the Parish of Morehouse, State of Louisiana, personally came and appeared Margaret M. Larche, a resident of said State and Parish

and Registrar of Voters in and for the Parish of Morehouse, State of Louisiana, who, upon being duly sworn, declared:

That she is one of the complainants named in the above and foregoing complaint; that she has read the same, and that all the allegations contained therein are true and correct.

Margaret M. Larche.
MARGARET M. LARCHE.

Sworn to and subscribed before me, on this the 9th day of July, 1959.

[SEAL] WOODROW WILSON,
Notary Public.

Clerk's note

Similar jurats executed by Mrs. Mae Lucky, Mrs. Mary K. Bryce, Sidney W. Platt, B. W. Berry, Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, Thomas W. Thompson, Henry Earl Palmer, Mrs. Pauline A. Culpepper, Mrs. Winnie B. Clement, Mrs. Lannie L. Linton, Cecil Manning, Miss Katherine S. Ward, Curtis M. Thomas, and U. Charles Mitchell appearing on pages 20 through 28 inclusive are omitted in printing.

29 *In United States District Court for the Western District of Louisiana*

Subpoena for Mrs. Margaret M. Larche

UNITED STATES OF AMERICA

COMMISSION ON CIVIL RIGHTS

To Mrs. Margaret M. Larche, Registrar of Morehouse Parish. At Bastrop, Louisiana.

Greetings:

Pursuant to lawful authority (P.L. 85–315), YOU ARE HEREBY COMMANDED to be and appear before the Commission on Civil Rights of the United States of America, or a duly appointed Subcommittee thereof, on July 13, 1959 at 9:00 o'clock, a.m., at their Commission Hearing Room, at U.S. District Court Room, U.S. Post Office Bldg., 424 Texas Street, Shreveport, Louisiana, then and there to testify what

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you may know relative to subject matters of inquiry committed by law to the consideration of said Commission, and not to depart without leave of said Commission.

You are hereby commanded to bring with you and produce before said Commission, or a duly authorized Subcommittee thereof, the following:

1) All records contained in Master Record File & Closed and Disqualified File, from Jan. 1, 1957 to July 1, 1959, as required to be kept under LSA–R.S. 18:235, including but not limited to forms of application for Registrars completed by all applicants, under LSA–R.S. 18:235, and all records required to be kept under LSA–R.S. 18:91.

2) All applications and disposition of such applications for copying, photographing or photostating records from Jan. 1, 1957 to July 1, 1959, under LSA–R.S. 18:92.

3) All notifications of citations to erase and answering affidavits of challenged voters & supporting witnesses, from Jan. 1, 1957 to July 1, 1959, under LSA–R.S. 18:133.

4) All rules and regulations issued by the State Board of Registration from Jan. 1, 1953 to July 1, 1959, under LSA–R.S. 18:191.

5) All letters, notices, memoranda or opinions, concerning administration of the registration laws, received from the Joint Legislative Committee (Concurrent Res. 27 (1954) and 9 (1956)), or its personnel, or the Attorney General of Louisiana, from Jan. 1, 1954 to July 1, 1959.

[Title and Sections refer to Louisiana Revised Statutes of 1950.]

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided in Sections 105(f) and 105(g) of the Civil Rights Act of 1957, reproduced herein.

To United States Marshal to serve along with the attached copy of the Rules of Procedure approved by the Commission on Civil Rights, and a copy of the Civil Rights Act of 1957.

Given under my hand this 29th day of June in the year of our Lord, 1959.

J. A. Hannah,
J. A. HANNAH,
Chairman—Chairman of Subcommittee.

29a UNITED STATES OF AMERICA

COMMISSION ON CIVIL RIGHTS

RETURN ON SERVICE

Subpena for .....
before the Commission on the .....
at.....

Received this subpena at .....
on ..... and on .....
..... at .....
I served it on the within named .....
by delivering a copy to h—— along with an attached copy of the Civil Rights Act of 1957 and Rules of Procedure approved by the Commission on Civil Rights, and tendering to h—— the fee for mileage allowed by law.

.....

Service Fees
Travel (at 8¢ per mile) $ .....

Subscribed and sworn to before me, a .....
..... this .....day
of ....., 19—

.....

(Note: Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.)

CIVIL RIGHTS ACT OF 1957

SEC. 105

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States

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court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

29b *Clerk's note*

Similar subpoenas on Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Wells Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry E. Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell appearing on pages 30 through 45 inclusive are omitted in printing.

46 In United States District Court, Western District of Louisiana

Marshal's receipt

UNITED STATES DISTRICT COURT,
OFFICE OF THE CLERK,
WESTERN DISTRICT OF LOUISIANA,
Shreveport 81, La.

Civ. No. 7479 & Civ. No. 7480

RECEIVED OF ALTON L. CURTIS, Clerk, USDC, WD OF LA. SIX ORIGINAL SUMMONSES & SIX COPIES FOR SERVICE, WITH ATTACHED CERTIFIED COPIES OF PLAINTIFF'S COMPLAINT, ETC. IN EACH CASE.

U.S. MARSHAL,
S'port, La.
By J. W. CANE.

JULY 10, 1959

65 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS.

Civil Action No. 7480

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

Transcript of proceedings

July 10, 1959 and filed July 30, 1959

Proceedings had in the above entitled actions, before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Shreveport, Louisiana, on July 10, 1959, at two o'clock
66 P.M. Appearances; Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana. Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana. Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, Louisiana.

Plaintiffs in Civil Action No. 7479. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana.

Plaintiffs in Civil Action No. 7840. Robert G. Storey, vice-Chairman, Commission on Civil Rights, Washington, D.C. Gordon M. Tiffany, Director, Commission on Civil Rights. Berl I. Bernhard, Attorney for Commission on Civil Rights. A. William Mottolese, Attorney for Commission on Civil Rights. C. E. Clark, Legal Assistant to Robert G. Storey.
67 Defendants: Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

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Colloquy

The COURT. Gentlemen, the Clerk just handed me, about twenty minutes ago, two rather lengthy complaints, the first being entitled "Mrs. Margaret M. Larche, et als., against John A. Hannah, et als.", No. 7479; the second being "J. A. H. Slawson, et als. vs. John A. Hannah, et als.", No. 7480.

The Court was advised in advance that these complaints would be filed, and out of a sense of fairness, we invited the attorneys and representatives of the Civil Rights Commission to be present because we understood that applications would be made for Temporary Restraining Orders as against the scheduled Hearing on Monday, July 13, 1959, to be conducted by the Commission.

I am sure the members of the Commission and their attorneys have not had time to read these Complaints, and neither has the Court, with any degree of understanding. For that reason, I think it would be proper that we adjourn this Hearing from now until 3:30 P.M. That will give an hour and a half. Will that be adequate time for you gentle-
68 men to orally answer the points that will be made? We will hear oral arguments from both sides upon reconvening, and it would be my purpose to have a brief filed by the Commission in opposition to the briefs which have been handed to me by the attorneys for the complainants. That brief will be filed, if possible, by noon tomorrow. I will defer ruling on the Application for the Temporary Restraining Order until I have had a chance to study the briefs and authorities that will be submitted in opposition to the Application.

Will an hour and a half be sufficient time for you to make, at least, an oral argument?

Mr. LASSITER. May it please the Court, as far as the Complainants are concerned, we have no desire to orally argue this thing.

I believe, and, of course, I am not speaking for the Commission, but suggesting, they could probably use the time better in answering our briefs, copies of which have been served.

If they want, we will waive the oral argument.

Mr. STOREY. I haven't seen any briefs.

Mr. LASSITER. They were just handed to you.

Mr. STOREY. I haven't seen any briefs.

think an hour and a half to confer would be agreeable with us, if it is agreeable with Your Honor.

69 The COURT. Frankly, I am not going to decide this upon the oral arguments, Colonel Storey. It may be you might use the time to greater advantage by working on the brief in reply than you might by coming back here for oral arguments.

Mr. STOREY. Do I understand the suggestion that Your Honor is making, that we adjourn until 3:30, to allow us to become familiar with this?

Of course, I say to Your Honor I understood the Petition would be presented, and find myself as a Defendant at this moment.

May we defer until 3:30 to decide whether or not we want to make a verbal statement? We will be back at 3:30, because there are voluminous papers, and I didn't know there was a brief, but we will certainly go into it as rapidly as possible.

Mr. SHAW. May it please the Court, I understand that Mr. Tiffany and the other attorney are appearing as representatives of the Civil Rights Commission and the named Defendants; is that correct?

Mr. STOREY. I cannot reply until I have had a chance to read these.

I understood I was to come here in an informal way, as suggested by Your Honor, and I find myself sued in two lawsuits.

70 I will let you know at 3:30.

Until I read this Petition, as well as your allegations, I cannot make any statement, and I don't think Your Honor should call upon me to make such a statement.

Mr. SHAW. He is either here, present, as a representative of the Civil Rights Commission, or not.

Mr. STOREY. If Your Honor please, I will answer that at 3:30.

Mr. SHAW. I would like to ask that the record show whether he is appearing as a representative of the Commission, or not?

The COURT. He is certainly here in proper person. There is no doubt about that.

Mr. SHAW. Is Mr. Tiffany here as a Defendant?

The COURT. Mr. Tiffany is Director of the Civil Rights Commission, and is not here as an attorney. Mr. Bernhard, Mr. Clark and Mr. Mottolese are here as attorneys. Is that correct, Mr. Tiffany?

Mr. TIFFANY. That is correct.

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Mr. SHAW. As attorneys for whom?

Mr. STOREY. May we answer that at 3:30? In the name of common decency and common justice, we should have at least until 3:30 and then I will answer your question.

71 The COURT. Court will recess until 3:30.

(Whereupon, at this point, there was a recess until 3:30 P.M.)

The COURT. The Court has been advised by the Crier that a photographer asked permission to make pictures in this Courtroom. That is strictly against the law and against the rules of this Court. It will not be permitted.

Have you decided whether you would like to be heard?

Statement of Mr. Storey in his behalf

Mr. STOREY. Yes, sir. First, I would like to read a statement in my behalf, if I may, for the record.

My appearance is pursuant to this Court's kind invitation to be present at a Hearing based upon a presumed ex parte Motion by the Attorney General of Louisiana. This Motion was understood to be for Temporary Restraining Order, seeking to postpone the Hearing set by the Commission for Monday, July 13, 1959, and upon the express understanding that the Hearing upon such Motion would be informal and in Chambers.

I am here for the limited purpose of responding to this Motion, and for no other purpose. My appearance is not to be taken as a submission to the jurisdiction of this Court to be sued individually, or in a representative capacity as a

72 member of the Commission of Civil Rights.

Shortly after the recess by the Court, at 2:33 P.M., this day, I was served with Citation and copy of Plaintiffs' Brief in Civil Action Nos. 7479 and 7480 in this Court.

I am ready at this time to make my statement and oral argument in Answer to the Application for a Temporary Restraining Order to prevent the conduct of the Commission Hearing, that is, to prevent the Hearing scheduled for Monday, July 13, 1959.

I ask leave of the Court to proceed now to make statement and oral arguments and reply to that part of the Application

and Brief filed, as pertaining to the Application for the Temporary Restraining Order, and for no other purpose.

May I supplement that to submit the matter on brief. Anticipating some of the issues that might arise, we have caused to be prepared a very informal memorandum brief, which so-called memorandum brief, the original of which I will hand the Court, and a copy to counsel on the other side.

Might I add, we believe after the brief conference and with the Brief they have submitted, the authorities and Petition, and the authorities we have in reply, that we might pro-
73 ceed to this Hearing under the limited expression indicated.

I would, therefore, suggest, if Your Honor is ready, we hear from the proponents and then we will reply, and go ahead with the briefs we have, especially, Your Honor, in view of the time, and I think Your Honor will take judicial notice this matter has been set, and according to their allegations, various witnesses have been subpoenaed and we think time if of the essence, and, therefore, we are ready to proceed.

Statement by the Court

The COURT. I might give you some tentative observations before you present your oral arguments, which I would like to have you cover in your arguments and, perhaps, be the subject of additional authorities, or briefs.

Aside from the question of constitutionality of the Statute itself, under which the Commission was constituted to operate, which is not before the Court, directly at this time, but would be the subject of action by a three-judge Court at some later time, these questions occur tentatively to the Court as being of much importance with respect to the application for a preliminary restraining order.

First, as to the question of the allegedly unlawful requirement for the production of the registrars' records, the Court has read the State Statute applicable to that subject
74 matter, and we also have noted the act creating the Civil Right's Commission.

Under the Federal Statute, failure to produce those records at the Hearing, does not, in and of itself, invoke a penalty. It simply requires that the Attorney General thereafter, if the Commission insists upon such records being produced, apply to

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the District Court of the Jurisdiction where the hearing is being conducted and ask the Court for an Order requiring production of such records.

Then, we believe, tentatively, of course, that any such order issued by this Court would remove the registrars from the penalties of the State law which prohibits such registrar from producing such records anywhere away from his office, except upon the order of a competent court. We believe this Court would be a competent court under such circumstances.

Second, as to the objection that the Commission's subpoena would require the complainants in this action to appear before the Commission, either in open session or in executive session, and give testimony which either would be, or might tend to be, incriminating, there is always available, of course, in such instances the refusal to testify under the Fifth Amendment.

The thing that strikes the Court as being most serious
75 in this Application for a Restraining Order, is the charge made in both of the complaints that the complainants by these very proceedings would be held up to public approbrium in this manner: that they have not been advised in advance of the charges that have been made against them, nor of the names of the persons whom accused them, and they, accordingly, do not know what the charges are and who is accusing them, and it is their constitutional rights to be so advised.

Third, if they do discover, at the public hearing, the names and the nature of the charges brought by their accusers, by the Commission's rules, which are claimed to be ultra vires by the Statute under which the Commission is created, prohibits either the complainants or their counsel to cross-examine such witnesses against them.

There is another question, and that is at to whether this Commission is subject to the terms and provisions of the Administrative Procedure Act adopted by Congress some years past. If it is, then clearly the complainants here would be entitled to know the nature of the charges, the names of their accusers, and to cross-examine.

Those are the points which seem to strike the Court as being the most serious ones, aside from the constitutional ques-
tion which is not before us directly, but is before us
76 incidentally in the consideration of the balancing of equity whether or not this restraining order should be issued.

With those observations which, we repeat, are all tentative and our mind is completely open and is subject to change after reading the authorities and hearing the oral arguments of able counsel on both sides, to which this Court will give the greatest consideration.

I should mention one more point, and it is this: if the hearing proceeds as scheduled, and if it results at the hearing that these complainants, are, in their judgment, slandered and held up to public approbrium by accusations which they consider to be false, and which they can demonstrate to be false by cross examination, and then the matter would proceed to a three-judge court, would or would not that question be moot when reached by the three-judge court? I think that is something we all have to consider.

Go ahead, Mr. Gremillion.

Colloquy

Mr. GREMILLION. If the Court please, to save time and not to burden the Court unnecessarily, we cannot say here more than we have already given the Court in our brief—in our memorandum on the discretion of this Court to issue the temporary restraining order, which we think is very thorough.

77 I forget the name of the case, but it is on page 3 of our memorandum and, of course, the additional brief we filed on the constitutionality question.

We cannot say any more than is in those particular briefs, and if the Court wants me to proceed to repeat what is in those briefs, I will be very glad to do it.

So far as we are concerned, in order to save time, and save your week-end as much as possible, we will submit the matter on the memorandums we have presented to the Court.

The COURT. Are you gentlemen sufficiently acquainted with the briefs which were filed by the proponents to reply to them?

Mr. STOREY. Your Honor, we would like to reply orally, not only in the nature of statements in reply to their complaints, but comment on some provisions of the Act, and then submit some authorities, being as fair as we can to the Court and opposing counsel, so you might understand our position.

We don't want to go over the week-end, if we can avoid it, and since time is of the essence, I think it might be helpful if

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we stated what our position is and point out some of the points, if that is agreeable with Your Honor.

78 Does Your Honor have a copy of this Act in pamphlet form?

The COURT. I believe there is a copy attached to one of the complaints.

Mr. GRENDLEAU. May I state, Your Honor, that a copy of the Act is attached to our brief on constitutionality.

Mr. SHAW. May it please the Court, I would like to say although the suit which I filed is a different suit, the brief filed on behalf of the plaintiffs in Civil Action No. 7479 covers all the points I would cover on behalf of my clients.

The COURT. Except the principle difference in your case is, that you do not attack the constitutionality of the Statute and you do not ask for a three-judge court.

Mr. SHAW. That is correct. They cover everything I cover, and some additional points, and I would be willing to submit it on their brief.

Mr. STOREY. If Your Honor please, I should like to point out a few points as provided in the Act, and I think they bear on some of the issues Your Honor pointed out, and may I say we appreciate Your Honor indicating some of the points about which he would like to hear.

Before I do that, however, may I say this, sir: I think it is fundamental in an equitable proceeding to examine the petition on the face and see whether or not it states a cause of action.

79 We do not think that either petition states a cause of action for injunctive relief, or for that matter, as a matter of law, principally for these reasons: first, as to the injunctive relief, and that is the principal thing they are after, is to postpone or prevent this particular hearing. They do not show any damages, or shall I say, any existing or past acts of irreparable injury, but they are all alleged to be in the future and are speculative, to say the least, and anticipatory, and are not real.

I think a fair reading of the petition in both cases, so far as injunctive relief is concerned, and you and I realize that is ancillary to the cause of action that must be stated—all in the future, or anticipatory, or speculative and in the future.

In the next place, looking at the petition as a whole and hurriedly examining it as his justification for the registrars'

suit that the Attorney General filed, he alleges the amount in controversy exceeds $10,000 by virtue of a certain Louisiana Statute. As we have hurriedly examined that Statute, the maximum penalty—may I say, both of these suits are civil suits and the Statute to which they refer, as we understand, provide a maximum penalty of $500 each. I believe there are sixteen complainants, and according to our arithmetic, I believe, that would be five times 16, which is 80, or $8,000. It shows
80 on its face that a cause of action is not stated as to the original, or main, cause of action to which the injunction is ancillary, and then on the ancillary part, we get into the speculative, or anticipatory.

That is our first point, looking at the petition on its face.

The COURT. Excuse me. I want to make a notation as I go along.

Mr. STOREY. As we have examined the petition in a very hurried manner, there are conclusions that the amount exceeds $10,000 in controversy in both cases, which they attempt to justify by virtue of penalties under a certain Louisiana Statute which the maximum, as I understand it, is $500 apiece.

Now, to the questions Your Honor raises, and I realize what they are—this question of incrimination, as Your Honor concludes, that might be handled by refusal to testify, according to the judicial records in Alabama. I think the case is reported that they did take advantage of the refusal to testify, and then in another instance refused to produce records, and later the Attorney General filed a civil suit, which, I understand, is still on its way upstairs.

As I understand, in the next place Your Honor said the
81 most serious, and I can appreciate what Your Honor says—that they are not advised of the charges and those accusing them.

In the first place, Your Honor, again going to the sufficiency of the petition, this is not an adversary proceeding. Of course, they have alleged that they are suing us for these things, but, in effect, what we are trying to do with reference to the hearing is not an adversary proceeding. The law doesn't so provide, and nobody is accused.

In other words, according to the records, they allege that the registrars for whom the first suit is brought have been subpoenaed to bring with them certain records of their office, which we allege are public records. We are not accusing any-

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body, and there has been no accusations. That is purely conjectural on their part in such allegations.

In the next place, in a hurried reading, they indicate if they came, they would have to close their office.

In our hurried examination of the Louisiana law, as I recall, each one of the Registrars can appoint a deputy while they are away, and you have the Police Jury for the purpose of appointing substitutes.

The COURT. They would probably answer to that by saying since you are calling on them to produce their records,
82 without the records the office couldn't operate.

Mr. STOREY. May I say, at least, it would be very temporary.

In order to try to make my point, Your Honor, the proposed hearing is not an adversary proceeding and we are not accusing anybody, and this issue of preventing their having the opportunity for cross-examination, etc., let me call three or four paragraphs of the Act to the attention of the Court.

The COURT. I think, probably, what they are afraid of and what their main complaint is about, Dean Storey, is that not the Commission itself, but the witnesses whom the Commission will call will accuse and will be subject to no further cross-examination in the search for a complete answer.

Mr. STOREY. I will get to that next. That is in there, I realize, but I hope to point out some provisions in the Act, so far as that is concerned.

We are not responsible for what Congress passed. We take the Act as it is.

May I call attention to the first part, which says:

"There is created in the Executive Branch of the Government a Commission on Civil Rights (hereinafter called 'The Commission')."

83 Then, it provides for the appointment of six members by the President, and that not more than three of the members shall at any one time be of the same political party.

The COURT. I might save you a little time. I am thoroughly familiar with the Act. I have read it from cover to cover, and back again.

Mr. STOREY. I am glad you have, sir, and probably my argument is superfluous.

I think it is only fair that with reference to the hearing, may we emphasize our points for the benefit of opposing counsel.

With reference to the hearings, under sub-paragraph F on page 3:

"The Commission, or on the authorization of the Commission, any sub-committee of two or more members, at least one of whom shall be of each major political party, may for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as The Commission or such authorized sub-committee deem advisable. Subpoenas for the attendance and testimony of all witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in Section 102 (j)(k) of this Act."

Then, it provides in the case of refusal to obey the subponea, etc.

Now, as to the question of failure to disclose the names of the witnesses, or the witnesses who might appear and
84 testify in advance, or if one is deprived or alleges he is deprived of his right to register, or vote, because of race or color, in my opinion, that complaint, which is required to be filed in writing and under oath before the Commission, and we, as the Act provides, as you will recall, the first and only mandatory provision of the Act, is that we shall investigate any complaint in writing under oath filed by a citizen of the United States alleging he has been denied the right to vote, or to have the vote counted by virtue of race, color, creed or national origin.

I think a fair construction of that is that certainly that is confidential matter.

Are we, as a Commission, required to divulge and to make known these complaints? They say we shall investigate them.

In the second place, I want to call attention of counsel, and Your Honor knows it: this Commission goes out of business on September 9, 1959. That is not long off.

The COURT. Unless it is reinstated.

Mr. STOREY. That is a question I don't think we can take into consideration in this hearing, or in the legal issue involved.

I am talking about what it is now, and what we are
85 facing, and the reports we are trying to deal with

In an ordinary civil proceeding, and this is a civil suit—in an ordinary civil proceeding, are there any rules, Federal or otherwise, that require the disclosure of the names of the witnesses and the information that is in any complaints that might be filed?

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Under the regular Federal procedure of discovery, and all of those remedies it is provided, but Congress did not see fit to provide it under this Act.

The COURT. Our Court rules provide for that, sir.

Mr. STOREY. Your Honor can inject them, if that is what Your Honor wants, if your Court rules so provide if it reaches Your Honor.

May I say, with reference to your other point, about if the damage is done, and they are alleging they are brought here and they are accused of these things, and again, that is anticipatory, but Your Honor observed what happened if the harm is done and later if they might prevail, or they might have proper recourse.

I just wonder if there is anything under the Act, or anything under the law, or anything under the decisions that require us to go that far.

Now, I think, and Mr. Bernhard a little later will be
86 glad to discuss some of the particular decisions as to whether or not the fact that because of this Act and because of the administrative procedure rules, etc., they do not have the right of cross-examination, and all of that.

Again, I think for the purpose of this hearing, or whether or not a preliminary or temporary restraining order is issued, that again, there is nothing in the law that justifies the granting of a temporary restraining order based upon that anticipation, because I think it is rather certain they will use lawyers, and it provides for the right of counsel to accompany these very people. The Attorney General files this suit in behalf of the registrars who are named, and he certainly represents them, and he has that right to represent them in the hearing before us, and if we get out of line and if he feels the procedure is improper, as laid down by the law and the authorities here, he can stop those things, or take whatever legal action he anticipates should be done at that time.

If Your Honor please, at this time that is about all I have to say, but in order to get our position before Your Honor, and before counsel on the other side present their argument, Mr. Tiffany, who is the Staff Director and former Attorney General of the State of New Hampshire, would like to make a statement, and then followed by that, Mr. Bernhard
87 will discuss some of the particular cases that are involved, if that is agreeable with Your Honor.

The COURT. All right:

Statement by Mr. Tiffany

Mr. TIFFANY. May it please the Court, I appear neither as a party, nor in the strict sense as counsel in the proceedings underway at the present time.

As Dean Storey said, I am Staff Director, and my name has been mentioned in the petition. I happen to be an attorney, and I would appreciate the opportunity to comment to the purpose—the limited purpose—of the request for a restraining order.

I think, possibly, I may be of some help in explaining some detail the character of the Commission, as it may be of concern to the Court in the proceedings.

When I say that, I don't appear as counsel, and the others don't appear as counsel. There is no provision, as the Court well knows from the study of the Act, that we should have counsel, or not have counsel in the Commission on Civil Rights. There is no comment that we have authority to sue or be sued. The only mention is in connection with the section which Your Honor cited a short time ago, that upon petition by the Attorney General to a Court of proper jurisdiction—the Commission itself has no contempt power of its own. It
88 can only proceed through the office of the Attorney General.

My limited appearance is solely as Staff Director for the purposes of the restraining order. Under the language of the Act, this Commission is set up to determine facts and not to resolve disputes, particularly, with respect to complaints which may tend to show that the right to vote is being denied because of race, creed, color or religion.

In a way, this Commission is doing no more than a Committee of the Congress itself, that is, as far as the fact finding procedure is concerned in making recommendations if it has any.

It issues no orders other than if the Court would consider subpoena an order. As I said earlier, the Commission has no contempt power which can enforce the order. It cannot remove any registrar. It cannot invoke penalties. It is not a part of the Justice Department, as I am sure Your Honor appreciates. It is set up under the same Act, yes, but separate and distinct from the Justice Department and is not to be confused with the Justice Department.

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We accuse nobody, in the criminal sense of the term, whatever. It is a question of what are the facts, and these we need to determine with all accuracy and objectivity in
89 the best manner possible. It is an entirely independent agency, therefore, in that regard. It cannot tell a single registrar to put a single voter's name on the voting list. It does not have any authority to remove anybody from his office, as in some of the cases which later may be cited to Your Honor.

In short, there appears to be in the express language of our section of this Statute, "no action within our power which could lead to irreparable injury", as we understand it, necessary to invoke consideration of this Court.

There is an obligation on the Commission to determine facts, fairly and impartial. In this particular instance, registrars and other State officers have denied that persons in the State of Louisiana are being denied the right to vote because of their color.

Under the circumstances, Your Honor, we submit that the only fair thing this Commission could do is hold a hearing and let the complaining witness take the stand, under oath, and tell his story, and this affords the registrar to do the same under the rules of this Commission, and those rules of proceedure specifically set forth by the Congress in the Act adequately provide safeguards which do protect the personal rights of those who appear before this Commission.

90 The hearing is not undertaken lightly, Your Honor. The Commission has this authority, and invokes it only as it is necessary: to be sure that it has the entire set of facts that it needs for its purposes.

Hearings take time and take expense, as Your Honor well knows. The actual hearing itself may begin and end in a short space of time, but it is the result of considerable work on the part of many people.

In this particular instance, our Commission, as Your Honor knows, is chosen with geographical distribution throughout the country. We have on their way, for this hearing Monday, Commissioner Dean Storey, who is here this afternoon and he is from Texas. We have Commissioners from Florida, Virginia, Washington and Indiana. Under these circumstances, we submit, Your Honor, so long as the Commission holds the hearing in accordance with its Statute and rules, the issue of

constitutionality for the purposes of the restraining order does not happen to be raised with fundamental substance.

If the Commission is to be complete its job properly, as the Dean called attention to the statute, it will have to submit its report on September 9, or earlier.

We submit that the only alternative that we have is to go ahead with the hearing and give all adequate opportunity to those who wish to be heard to present their statements accordingly.

91

The Dean already cited the provisions under our Statute that call for an executive session.

Not only when it is anticipated testimony may arise which may tend to incriminate someone, but even if it might tend to defame some person in the slightest degree, that it may call for an executive session, and the Statute, in addition, provides——

The COURT. That is within the discretion of the Commission, itself?

Mr. TIFFANY. That is correct. May I point out, the Commission is constituted of five out of six attorneys, many of them of distinguished stature.

In connection with what we do not do, I would like to call attention to the Court, that we are, in no sense, a regulatory agency. We do not issue orders. I think that might well be a factor for consideration so far as the administrative procedure that might be concerned.

Statement by Mr. Bernhard

Mr. BERNHARD. I am appearing in the same capacity as Mr. Storey and Mr. Tiffany. Although, I am Staff General Attorney for the Commission, I am appearing as an employee of the Commission for a limited purpose, to discuss the restraining order.

Let me start out by saying that in the case of In re Wallace, the constitutionality of the Act under which we operate, was held to be lawful and constitutional; that it was a proper delegation to this Commission under the Fifteenth Amendment——

92

The COURT. I know Judge Johnson said that, but was that a direct issue in that case?

Mr. BERNHARD. Yes. They challenged the constitutionality.

The COURT. That does not appear from his opinion.

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Mr. BERNHARD. The challenge was made in that case, that the registrars did not have to respond to the subpoenas we had issued because we had no authority to issue them, and Judge Johnson ruled as to the constitutionality of the Act under which we operate and under our power to investigate allegations of discrimination, including voting.

The COURT. He didn't make it clear that the constitutionality of the Act was directly challenged. He did say, I believe, that the Act superseded any of the laws to the contrary by virtue of its origin in the Fifteenth Amendment.

Can you point to the exact language where he says it was challenged?

Mr. BERNHARD. Yes. This is on page 67 of the opinion: "The authority delegated to the Federal Government by the Fifteenth Amendment to the Constitution of the United
93 States is undoubtedly the authority under which the Congress of the United States was acting when the Civil Rights Act of 1957 was passed. The provision in the Act providing for investigation of alleged discriminatory practices, including inspection of voting and other pertinent records, must be considered to an essential step of the process of enforcing and protecting the right to vote regardless of color, race, religion or national origin. That part of the Act is, therefore, by this Court considered 'appropriate legislation' within the mean of Section 2 of the Fifteenth Amendment."

The COURT. Being appropriate and being constitutional might be two different things. I don't know, offhand.

Judge Johnson was operating under considerable pressure, as is this Court, at the time he rendered his oral opinion. It may be he meant to say that.

Mr. BERNHARD. By being appropriate legislation under the Fifteenth Amendment, and Section 2 says that Congress is empowered to pass legislation implementing the Fifteenth Amendment, it must, necessarily, be constitutional.

The COURT. At least, you think so.

Mr. BERNHARD. I think so, and I think the Judge could not have reached his decision to enforce these subpoenas——

The COURT. I am not going to comment on
94 the constitutionality, because I undoubtedly, would be one of the three judges of the Court which will be convened.

Mr. BERNHARD. I would like to take the case one step further, and I think it relates directly to the question of so-called damages which are alleged by the plaintiffs here.

In the same case, as you know, the Court ruled to the extent that the Federal Government is authorized to investigate voting complaints and seeing the records are incidental and necessary to that process, state laws contrary to those must yield.

In fact, the language, which I think Your Honor knows, part of it was that legislation enacted pursuant to the Federal Constitution is binding on all state officials, including the Judges.

There is further language on page 70 of the same case:

"In any event, regardless of their status, under Alabama law, registrars cannot be given any immunity from the exercise of a Federal function such as that involved in this case. To hold otherwise would be to say that the State of Alabama could thwart the Congress of the United States in any field
95 and deprive the Federal Government of its specifically delegated powers, here those delegated specifically by the Fifteenth Amendment to the Constitution, simply by saying that the state officers, such as the registrars, were judicial officers, or judges. That cannot be and it is not the law as this Court understands it."

The reason that it is important to emphasize this point, is that in this particular instance, we are not equating equal law. We are equating the Fifteenth Amendment to the Constitution with a law passed pursuant to state authority, and that where there is a conflict in an area of concurrent power, the state must yield.

Therefore, to talk in terms of irreparable damage at all is to anticipate and rule that the statute of the state is superior to that of the Federal Government.

The COURT. They are not talking about irreparable damage to the state. They are talking about irreparable damage to the registrars; isn't that correct?

Mr. GREMILLION. Yes, sir.

Mr. BERNHARD. That is perfectly correct, and that is the basis of the opinion in the case of In re: Wallace.

96 The complainants, at the same time, rely upon the case of United States versus Rainey.

The COURT. That was an action by the Attorney General himself.

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Mr. BERNHARD. That is correct. This case had nothing to do with the rights of the Commission.

The COURT. All Judge Davies did was to determine what was the meaning of "person."

Mr. BERNHARD. This leads me to another point which I would wish to emphasize very importantly: throughout the brief of the plaintiff, is reference to Greene vs McElroy, which they seem to give some juncture in their position on cross-examination.

In fact, I would like to point out that the gist of that opinion was that there was a failure of presidential or congressional authority to set up security clearance, and this must be emphasized: in that case, an individual was deprived of his liberty and his property by being deprived of a livelihood as a result of the security clearance regulations which had been established.

It has been stated by Mr. Tiffany that our Commission could not invoke such hardship on any individual. We have no power to make any rulings regarding discrimination——

The COURT. It is not the action of the Commission, as such. What they are complaining about is the result of the hearing itself and what might be developed in the hearing through witnesses making accusations against these people without them having the right to cross-examine, and without being advised in advance about who they are and what they will say.

97

That is the gist of this complaint, as I read it.

Mr. BERNHARD. What they are doing is anticipating that, in fact, the allegations we have received must, necessarily, be true and that they will have an adverse effect on the registrar, as a result. They necessarily must presume the lack of discretion and good faith on the part of the Commissioners, to this extent: they are anticipating the Commission will not consider the rights against self-incrimination, and to allow their attorneys to represent them and protect them against infringement of their constitutional rights.

The COURT. Let me ask you this: let us suppose that a complaining witness were to take the stand and to testify before the Commission; that one of these registrars from a particular parish involved flatly denied the witness the right to register because of his race. According to the complaint and brief, which they have filed, that would be an accusation of a

Federal crime. I forget the section of the Federal Statutes, but it is cited in their brief.

98 What they are complaining about is that such a witness, unknown to them until he takes the witness stand, is permitted to testify, unchallenged, that the registrar committed a crime. Whereas, if permitted to cross-examine, or if permitted to know in advance the name of the witness and the nature of his testimony, they might be able to thoroughly discredit that witness.

That is what they are complaining about, and I think, that is their most serious complaint.

Mr. BERNHARD. If it please the Court, we are acting under the same essential rules of procedure that Congressional committees operate under. That is a possibility when they conduct hearings. It is an inconceivable and remote possibility.

The consideration has to be made that in our hearings any individual who is either subpoenaed, or desires to submit a prepared statement, may do so, and those who are subpoenaed to come in and hear the testimony and are able to make their statements which could refute the testimony they now hear.

So, we are not in the same situation as are the people in the Greene case, who were never given an opportunity to see the people, or hear the accusations against them.

99 The COURT. That might well be a valid distinction in the Greene case as to this one.

Mr. BERNHARD. If the Court please, I think there are a few other points which I think are directly relevant and I would like to discuss them because they point out the distinction in our position.

The complainants cite Jones vs. Securities Commission; in that case there was a stop order against the issuance of a registration statement, and the failure by penalty to issue a proper registration statement is assessed by the SEC, itself. They are empowered to act directly upon those individuals.

We have no such power, and to the extent they rely upon administrative agencies, they are in no way relevant to the powers and authority given to this Commission. We go no further than finding facts and making recommendations to the Congress.

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Therefore, those cases they are relying upon, where a personal legal interest is affected directly by the action of an administrative agency, is not relevant.

The COURT. Has there ever been, before the passage of this Act, any branch of the executive department created by Act of Congress with similar powers?

100 Mr. BERNHARD. Your Honor, I am in no position to give a definitive answer on that.

The COURT. I am familiar with Congressional investigating committees.

Mr. STOREY. Since Your Honor asks the question, may I attempt to answer it?

The COURT. Yes.

Mr. STOREY. I happened to serve on the Hoover Commission. We were given subpoena power. We were directed to go into policy questions, and we were directed to issue subpoenas. I just know that one.

Mr. BERNHARD. May I proceed?

The COURT. Yes.

Mr. BERNHARD. There is another fundamental group of principals which complainants seem to overlook, or treat with some levity.

In order to be granted injunctive relief, they must establish clearly that there is no adequate remedy for them at law. There is an adequate remedy for them at law in this instance: they are in a position where they can go in and challenge the legality of a particular act, or of the rules of procedure, and only after they have exhausted that legal remedy can they come in and seek injunctive relief.

The COURT. Would that be a legal action, or equitable action?

101 Mr. BERNHARD. It would be a legal action.

The COURT. Would it be triable by a jury?

Mr. BERNHARD. I believe it would if they were found, for example, to refuse to testify and would be found in contempt of court in certain situations.

The COURT. You say it would be a legal action instead of an equitable action that would be involved.

Show me how such an action would be a legal action as distinguished from an equitable action?

Mr. BAUMAN. The parties, for example, could refuse, if they so chose, to ignore the subpoenas issued against them, and as enforcement of the rights of the Commission to see that its actions are carried out and they were then challenged and we sought a court order contesting it, they could seek a court order at that time.

The COURT. They would come to the Court for an order compelling production of documents?

Mr. BAUMAN. That is correct.

The COURT. I believe Judge Johnson signed such an order exparte, did he not?

Mr. BAUMAN. Yes, and during the subsequent proceedings to comply with the order, he dismissed the proceeding against Judge Wallace for various reasons factual to that case.

[10] One other point which complainants seem to rely upon rather heavily, is that the Commission failed to disclose the names of people that it is investigating, or may contemplate bringing to a hearing.

In our memorandum, we cited to the Court two cases which establish that the needs of confidentiality for proper internal administration of an agency are perfectly legitimate and legal, and that is all this Commission has done.

The COURT. At that point, let me interrupt to ask this question: if there is that need for confidentiality—and I can see your point on that—if you did not hold such complaints confidential, many people who might have complaints would be afraid to assert them. But, if that is necessary, they become known when they testify at the hearing, but not until then. So that, actually, you are protecting the confidentiality so far, but no further.

What is the point of that?

Mr. BAUMAN. The point of that is this: because of the, perhaps, remote, but the possibility of some type of counterclaim, or any type of reprisal which might conceivably be brought against any witness who seeks to testify.

All of our witnesses, as we contact them, are asked whether or not they are willing to testify in an open hearing. If

[11] they indicate in the affirmative, then we decide whether their story is legitimate, to the best of our ability, and they are brought in and subpoenaed to testify in an open hearing.

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The Court. Would the Commission give any consideration at all to a complaint whereby the witness was unwilling to testify at the open hearing?

I know the Statute provides for affidavits which may be filed, but perhaps I am asking a question I've got no business butting into.

Mr. Bernstein. It is a very relevant question, Your Honor.

The way that operates, if a witness were to testify, or to tell us that he, for some reason, is afraid to testify, he may ask to testify before the Commission in executive session. If he, at such executive session, testifies and the Commission determines his story may be credible, and subsequent to hearing this testimony it may decide he has given some type of testimony which may tend to degrade, or incriminate any party——

The Court. There is some section which requires notification of the party defamed, and let him make a reply.

Mr. Bernstein. Such person who may be degraded, or incriminated, has an opportunity to testify before the Commission after receiving notice of the contents of the
104 allegations which have been made against him, and that witness is allowed, upon request of the Commission, to subpoena additional witnesses. Under no circumstances, are any of the witnesses, or any of the registrars, in a position where they do not have an opportunity to answer allegations, or statements, made against them.

The fact that they all appear at the same time at a public hearing, or under the protection of an executive session, dispenses the notion that this is the type of proceeding which occurs in many security cases, where one never finds out the names, or sees the testimony or statements made against him.

Unless there are further questions, if the Court please, I have no more.

I thank you for the opportunity to state our position.

The Court. Do you wish to be heard, Mr. Gremillion?

Statement by Mr. Gremillion

Mr. Gremillion. Yes, sir.

May it please the Court, I have a few observations to make concerning the oral argument of Dean Storey, Mr. Tiffany and Mr. Bernhard.

In the first place, with reference to jurisdiction, let me read Your Honor a pertinent part of the registration laws, with reference to violations:

105 "Whoever violates this section shall be fined not less than $100 or more than $500 and imprisonment for not less than 60 days or more than 2 years."

The Dean says we have $8,000 possible maximum penalty——

Mr. STOREY. I thought this was a civil action?

Mr. GREMILLION. May it please the Court, may I continue?

Mr. STOREY. Excuse me.

Mr. GREMILLION. We have, in addition to that, the cost of transporting the records of 17 parishes—the entire office, which is what the subpoenas call for, to Shreveport.

The COURT. Is there any provision in your budget to pay the cost of that?

Mr. STOREY. Your Honor, as I recall, you tender them a per diem and mileage.

In Alabama, there was one registrar who brought some records in his own car.

The COURT. Depending upon the size of the parish and the population, the records would be larger or smaller.

106 Mr. STOREY. I don't think any fair construction of what they have been asked to bring is to remove their office to the hearing. That is not what the subpoena says.

Mr. GREMILLION. It calls for all of their records. It calls for their master files. That means they have to move every record to Shreveport.

I have read the Civil Rights' Act very carefully and the only remuneration is $4 a day for a witness to testify and mileage of 7¢ a mile, which they have to pay, but other than that there is nothing—absolutely nothing in the Act that provides for a refund of those particular costs.

We have 17 parishes where registrars have been subpoened, as far away as 250 miles from Shreveport—Franklinton, Louisiana.

In addition to that, one of these registrars could lose his job because he could be removed by the Board of Registration.

If that were to happen, the figure would be tremendous. You have the probability of the loss of a job.

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We submit, as far as the $10,000 jurisdictional question is concerned, our petition amply shows that it is in excess of that amount.

There is nothing in the Civil Rights' Act that provides
107 that the Commission has the authority to keep the complaint a secret.

I have studied that very carefully, and I find nothing——

The COURT. That is just done by their own rules.

Mr. GREMILLION. I will come to that, if Your Honor please.

The Commission, at a meeting in Atlanta, Georgia, passed a resolution saying they were going to keep the complaints secret, and they did that of their own authority and without Congressional or legal authority to do so.

I don't want to get personal about this, but we have been advised, and we are ready to testify upon the trial of this matter, that the Commission actually has complaints, or there have been press releases, that have emanated from Washington——

Mr. STOREY. If the Court please, I can't help but to object to an argument about what might be introduced in evidence on an application for a temporary restraining order.

I thought we were arguing to Your Honor, as a matter of law.

The COURT. We are arguing it, as I see it, on the basis of the allegations of the complaint as fairly
108 construed.

Mr. STOREY. If the allegations he has just stated, are in the complaint, I have no objection.

The COURT. I don't know what he is about to say.

Mr. GREMILLION. If Your Honor please, I don't know the paragraph, but in our complaint, we point out that the Commission has received complaints, and as a result of those complaints, they intend to hold a hearing.

I was elaborating on our knowledge, because I know personally—I have been advised by Mr. Tiffany time and time again that they do have complaints and that intend to investigate them and they did investigate them.

I was so advised by Colonel Rosenfeld, their investigator, when we held a preliminary hearing in Shreveport.

We have asked the Commission, time and time again, in Exhibit A and Exhibit B—we have asked them time and time again to tell us the nature of these complaints.

I have offered through Colonel Rosenfeld, an offer to which I have had no reply as yet, that the State of Louisiana was as interested in voter irregularity and discrimination on
109 the right to vote as the Federal Government.

Mr. STOREY. Your Honor, I have read this petition pretty carefully. I don't know of any allegation such as the statement he just made.

The COURT. I will let him go ahead for the reason that I permitted you and Mr. Tiffany to make background statements as to the Commission. He is generalizing as to the background of his side.

Mr. GREMILLION. We offered the Commission our assistance because we were interested in that matter just as much as the Civil Rights' Commission. To date, we have had no reply.

I am making this observation for this particular reason: we have called upon the Commission on innumerable occasions to tell us the nature of the complaints, the names of the complainants, and so forth, in order to assist them. We still have had no reply.

I have called the attention of the Commission to Louisiana law, time and time again. I have sent the Commission copies of opinions of the Attorney General's office. I have advised them of the conflict between Louisiana law and the rights of the particular Commission.

To solve this difficulty, the Civil Rights' Commission has done nothing, and it is because of that fact, it is neces-
110 sary for these registrars to bring the very action we filed today.

May I say this: the Civil Rights Act provides—I don't know the section—for a State advisory committee. The Civil Rights' Committee established a State Advisory Committee which exists in Louisiana today. I believe Mr. Rufus Lamar, of New Orleans, is the chairman of it.

The Commission has an ample remedy. They can work effectively through their State Advisory Committee. Through that committee, they could secure a registered voter in one of these parishes and examine the records. Through that committee, they could get 25 registered voters to look into the particular records. Yet, the Civil Rights' Commission ignores the existence of the Attorney General's office and ignores the provisions of the Louisiana law. Whether they are doing that wilfully, or what the reason for it is, I don't know.

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There is no necessity for a hearing. There is no necessity for an invasion of the Constitutional rights guaranteed to these registrars.

The COURT. I don't believe that question is before the Court. What we have to decide is the validity.

Mr. GREMILLION. I think it is relevant for this reason: I am trying to show you the necessity for the issuance of a temporary restraining order, and to show you the necessity for the
111 filing of this suit, and that is why I considered my remarks relevant on that point.

The COURT. In other words, I don't believe this Court would be within its rights in examining into the motives of the Commission. We know what they are doing, and it is either right or wrong. That is what we have to decide.

I would like to hear from you on the question of mootness, which I raised a while ago.

I don't believe either side touched that, that is, whether or not plaintiffs' rights would be lost if the restraining order were not issued—if this hearing were permitted to proceed.

Mr. GREMILLION. Let me say this: if this hearing is conducted on July 13, as scheduled, every right that the registrars have and that we are complaining of this particular petition will be lost.

Counsel says they talk to a complainant and discuss his testimony as to whether he will be willing to come in and testify, or not, but we don't know who they are. We have no way of knowing whether they will be present, or not. We have no way of knowing whether a particular complainant will be here. That information is afforded the registrars and it naturally follows that the registrars are being accused, or else they wouldn't be subpoenaed.

Let me make a comment regarding the Commission's
112 rules, and I would like to show that they are most impractical.

Suppose someone came up—and I understand this is supposed to be a one day hearing—suppose someone came up here and testified that the Registrar of Voters in Washington Parish had defamed him, or deprived him of his constitutional rights, and says something that would be injurious to that registrar. How am I, as his attorney, under the law, able to run to Washington Parish and find someone to thoroughly dis-

credit that testimony in time to bring them to this very hearing?

The damage will have been done. In common parlance, the horse will be out of the gate, and we have no remedy to protect those particular individuals. It stands to reason if this hearing is held, that the damage will have been done, and the serious points we raise—I am not going over them again because the Court is familiar with them—the points we raise will be completely lost, and the irreparable damage will not be able to be cured.

Mr. Lassiter would like to make a few remarks.

Statement by Mr. Lassiter

Mr. LASSITER. If it may please the Court, I merely wish to sum up, if I may, my understanding of the opposition to this temporary restraining order as made by Dean Storey and Mr. Bernhard and Mr. Tiffany.

113 As I understand their argument, it is this: on Monday, they will bring these complaining witnesses and place them on the stand and they will give testimony. Then, these complainants in these suits can be placed on the stand and take the Fifth Amendment and that then the Attorney General can come in and ask this Court for an order to bring in their records and then they can put themselves in contempt of this Court in order to attack the constitutionality of this Act.

The COURT. I think the orderly way to handle a matter of that kind is that if the restraining order is denied and if the registrars do decide to stand on their rights as they conceive them, and not testify, or not produce the records, then any application by the Attorney General for an order compelling their production, in my opinion, properly should wait until after the constitutionality is passed upon.

With that observation, you might proceed.

In other words, this Court will not issue such an order until the constitutionality of the Act is passed upon by a three-judge court.

Of course, in the meantime, time is running out.

Mr. LASSITER. We have been asked to assume that Dean Storey, who is only one member of that commission, and whom we all know and respect, can speak for that

114 Commission. That is not correct, there are five other

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members who may come in here Monday morning and say, "Dean, we like you, but you haven't expressed our feelings in that matter at all."

Mr. Tiffany is Director. He hasn't said there is going to be cross-examination of any witness.

As far as this Court knows, and as far as this matter is concerned today, we don't know that any witness will be here. The only witnesses that we know will be here are the 24 that have been subpoenaed through this Marshal's office. We have no way of knowing, and this Court cannot assume, one witness will be here, because Mr. Bernhard's statement was that if they agree to come, they will bring them. He didn't say one of them had agreed.

Colloquy

Mr. GREMILLION. Judge, may I make one remark about the mootness matter.

The COURT. Yes.

Mr. GREMILLION. Of course, the Act of Louisiana makes the Attorney General the representative of the Registrar in a matter of this kind, but I want to call the Court's attention particularly to the rules in Section 2(C). It only provides that the witness who is subpoenaed may bring his attorney to advise him as to his constitutional rights, and that's all.

115 The COURT. The rules expressly prohibit cross-examination.

Mr. GREMILLION. That is correct.

Suppose Mr. Charlie Mitchell, of Caddo Parish, was accused? I wouldn't have the right to cross-examine that individual. I would have no right to protect him, and that is a matter that has to be passed on.

The COURT. Let me ask Dean Storey this question:

Would you mind telling the Court, Dean, why cross-examination was written out? Was that because of the length of time the hearing would take, or something else?

Mr. STOREY. Your Honor, I was going to comment on this mootness, and I will try to answer the question as best I can.

You will notice the Act says, "may conduct informal hearings". It is fact-finding. Under the rules, we provided they may be represented by counsel.

Another thing, they are purely informal. This 2(e), I think, takes care of a lot of things we have been talking about.

"If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or in-
116 criminate any person, it shall receive such evidence in executive session; afford such person an opportunity voluntarily to appear as a witness; and receive and dispose of requests from such person to subpoena additional witnesses."

From our experience, nobody has asked that it be handled in exactly that way.

The COURT. What they are saying is that they are entitled, at least, to ask the witness, "have you stopped beating your wife?"

Mr. STOREY. The only thing I can say, without going into the legislative intent, it is not an adversary proceeding. It is not under the administrative procedure act as we understand it, and it is informal.

We have never held these hearings at length. Counsel have been present and counsel have advised their people.

May I, while I am on my feet, since Your Honor asked me to comment, may I say one thing further?

The COURT. Yes.

Mr. STOREY. The Attorney General made much of the fact that we have asked them to bring all these records of all of their offices, and move their offices.

117 Here is what the subpoena says to bring:

"1. All records contained in master record file and closed and disqualified file, from January 1, 1957, to July 1, 1959, as required by a certain Act;

"2. All applications and disposition of such applications for copying, photographing or photostating records from January 1, 1957, to July 1, 1959."

All I am trying to say is that it limits it to those particular times.

"3. All notifications of citations to erase and answering affidavits of challenged voters and supporting witnesses, from January 1, 1957, to July 1, 1959;

"4. All rules and regulations issued by the State Board of Registration from January 1, 1953, to July 1, 1959;

"5. All letters, notices, memoranda or opinions concerning administration of the Registration Laws received from the joint legislative committee."

118 I don't see that that takes any very big bulk, if the Court please.

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Thank you.

Mr. GREMILLION. My only reply is that I would like to enlighten the Dean and tell him the records are quite voluminous and tremendous.

I appreciate his sincerity. I do not question his sincerity. I respect him very highly, but nevertheless, the difficulty and trouble involved is stupendous.

I am sure this Court is perfectly familiar with the records of a Registrar's office.

The COURT. Just casually familiar, I would say.

Mr. GREMILLION. Just one more thing, Judge, and I will stop.

Again, I talk about the sincerity of the Commission and their desire to treat this matter confidentially. I quite agree that is a very fine thing, but we are not a nation of men. We are a nation of law, and the withholding of the names of the complainants is against every principle of law in this nation.

The Supreme Court of the United States stated that very clearly in Greene vs McElroy, which was handed down by Chief Justice Warren, the organ of the Court, on June 29, 1959.

119 The COURT. You mean you agree with the United States Supreme Court?

Mr. GREMILLION. In this instance.

Mr. SHAW. May I be heard, Your Honor?

The COURT. Yes.

Mr. SHAW. In line with what the attorney general just said, Your Honor, I am sure you are familiar with that quotation of Jefferson in Matters Pertaining to our Constitutional Rights:

"Let nothing more be said of confidence of matter, but bind them down by fact and the constitution."

What he meant there is exactly what we are confronted with today. Regardless of how much we might think, as individuals, we should not entrust our sacred rights in the committee of individuals and let them protect it as opposed to law.

In this case, we must examine the matter from the standpoint of law, and not what we might think of the motives of the members of the Commission. I don't think even the members of the Commission would argue with that, for the Court to do that.

I would like to go back and look at what this Act, and particularly the rules which have been served on my client,
120 would permit this Commission to do. That is the test. Not what they might actually do, but what they do.

The first thing we have to consider is that we alleged, and as the Attorney General alleged in this proceeding, we alleged the hearing is purportedly conducted under that section of the Civil Rights' Act which directs and requires investigation of complaints made in writing, under oath, charging a deprivation of civil rights in connection with the right to vote on account of race, color, creed, religion, etc.

Since that is the basis of this hearing, and we are alleging it for the purpose of this particular matter, we should take the allegations as true. It necessarily involves a charge of criminal conduct. It necessarily involves an action in damages against these parties in the complaint.

This proceeding, as is contemplated, would be a fact-finding proceeding to investigate these particular charges against our people.

Under those circumstances, I requested from Colonel Rosenfeld, personally, and subsequently requested from Mr. Tiffany, by letter, to furnish us the complaints against one or more of these particular people whom we represent.

121 I received a letter stating that the Commission adopted a policy declining that information to anyone except staff members.

This is directly and specifically what was involved in the Greene case.

The COURT. I have read that case.

Mr. SHAW. That case did not involve the adjudication of this man's right to hold a job. It simply discussed whether or not this man would be cleared for the privilege of reading classified information.

Indirectly, the court found this would cut down on his job opportunities. It may result in the loss of his job.

That is exactly what we are alleging here. Indirectly, their actions would have the effect, first of all, of jeopardizing the positions of the registrars and my clients in their several occupations.

Your Honor is familiar with that line of cases, that the action of a registrar of voters under an unconstitutional statute

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does not protect that registrar of voters from civil and criminal penalty.

If these registrars of voters, or these other people, come up here pursuant to these subpoenas and the subpoenas turn out in the end to be unconstitutionally issued, that will not protect them. They will still be liable to the State of Louisiana
122 for acting without authority to come here.

That is the jeopardy beyond any $10,000 jurisdictional amount involved in this case.

It is inconceivable to me that such a thing can occur in our day and age.

Your Honor read this Act and listened to these gentlemen say what could happen. Mr. Bernhard said they asked a witness whether or not he wishes to testify at an open hearing. I presume, if he said he does not wish to testify at an open hearing, they will permit him to testify in executive session. An executive session is not going to permit our clients to be present—certainly, if it were possible for us to be excluded under the Act, they would exclude us.

Secondly, our clients, these registrars, under the terms and provisions of this Act, can be called into executive session, whether they want to be in executive session, or not. They can be forced to testify, and that portion of the testimony which the Commission might want to release it can release. It can withhold a portion that they don't want to release. It is a power granted them by this Act.

Should our clients come out and say they gave part of the testimony, and this second part would explain what I
123 meant, but the first part would change the entire meaning, our clients could be subjected to fines and imprisonment under terms of the Civil Rights' Act.

I believe the last type of commission that was constituted was under James 1st of England. That was the very reason Lord Coke issued writs and got in such trouble. They wouldn't let them know who testified against them, but they told them "you have been charged. What do you say?"

It is inconceivable to me that such a thing could exist in an Anglo-Saxon country. We know it exists in Russia and Nazi Germany, during our time.

I never thought I would be in Court, in my life, arguing toward the United States against this type of action. I think it is a crime and a disgrace.

I want to, again, emphasize I make no personal reflection on the members of the Commission.

I might say that the members of the High Commission in England were people of the finest character. They were nobles.

History reflects that Bartholemew in France massacred the Huguenots and that was done under the guise of doing something for the betterment of the world and the betterment of religion.

In England, at various times, the Puritans were
124 persecuted and the Puritans persecuted other people.

We thought we had gotten rid of that. We thought we got rid of it when England threw out the type of proceeding known as a Star Chamber Proceeding, but here we are in the Twentieth Century having to face the exact type of thing that no one, in our memory, has had to face in an Anglo-Saxon country, and I think the Court should act on its own motion and prevent it from occurring in our country. To me, it is inconceivable.

I would like to ask Dean Storey, who is an imminent attorney, to consult with the other members of his Commission to see if they cannot revise the so-called rules. Part of this is in the Act, but their recommendations to Congress are supposed to be for the protection of civil rights. I presume that covers the civil rights of white, loyal Americans, who reside in the South, as well as the colored.

If they are concerned with Civil Rights and the abuse, they should recommend to Congress this Act be changed, radically, and that a type of proceeding which we all recognize as fair be substituted in its place.

If this is not irreparable injury we are talking about—the most fundamental rights of individuals being violated—then,

I certainly don't know what irreparable injury is.
125 As Your Honor pointed out, the crux of this matter is a question of constitutional rights and not so much technicalities of law. You are bound by the technicalities of procedure, and any Court is, and those of us who follow the law know the rules of procedure are made for the protection of people, not for their operation.

We ask this Court, and I am asking the members of Civil Rights' Commission to re-examine this entire matter so that the rights of this country will not be sold down the river, under

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the guise of a person claiming to have his civil rights violated and who doesn't face his accuser and the charges are kept secret.

Mr. TIFFANY. If the Court please, I have about four points I would like to make quickly. First, as to the confidential nature of these complaints: this very instance is one where we believe we have good reason for the confidential nature of these complaints.

Mr. Shaw referred to his letter requesting the names of these parties, and the purpose was to charge these people with perjury before a Grand Jury.

With respect to the matter of cross-examination, as I said earlier, and I would to emphasize again, this Commission is functioning as a fact-gathering arm to collect facts and present them to Congress in very much the same way as
126 any committee of the Congress might do. It is a perfectly proper delegation which has been done time and time again.

We conduct our fact-finding in the same manner as any Congressional Committee has been doing, and these rules we have adopted have come about by considering the fair way to conduct a hearing.

The Attorney General said the Commission has done nothing to avoid the necessity of a hearing. Nobody knows better than the Attorney General to what extremes we went to try to avoid the necessity of the hearing.

The Commission prepared questionaires in accordance with the discussions we had with the Attorney General. They were exhaustive questionaires. The questions pertained to matters which will make it entirely unnecessary for us to have the testimony, or have the witnesses, before us. We hoped we might have answers to that. The Attorney General protested, and they advised reasonable compliance will be given consideration by the Commission and they were advised to note objections to the questions and those objections would be given consideration.

I submit it is entirely possible we would not be here today if we were able to successfully pursue these alternate courses.

As I said earlier, the Commission does not undertake
127 a hearing lightly, and we did not in this instance.

Mr. Shaw made the statement that Section 1, with respect to investigation of complaints, is the sole section upon

which we may hold hearings. We may hold hearings whenever necessary to carry out the functions of the law, which include the study and collection of information which may develop legal developments which tend to show——

Mr. SOLAR. What I meant to say, we have been informed, and believe, the purpose of this particular hearing was to investigate allegations made in writing, under oath, charging a denial by these people of certain things. It was not that you did not have the power to hold otherwise.

Mr. GREENBERG. The rules provide that the very first act of the chairman is to announce the subject matter of the hearing.

We can't go into the hearing until we know what it is about.

Even today, at 5:32 P.M., we don't know what it is all about and Monday morning is the hearing.

Mr. TUTTLE. There are rules provided by the law and the Congress itself that the purpose of the hearing will be clearly stated by the person who is the chairman of the hearing.

120 The COURT. He said that is too late.

Mr. TUTTLE. Finally, I wanted to say that we are not in the process of adjudication. The objection to a Star Chamber Proceeding might have some bearing. We do not adjudicate.

Mr. GREENBERG. We did meet in a very friendly conference with members of the Commission, and I would have advised the registrars to answer those questionnaires had they been relevant and had they been material and had the questionnaires been related to their work.

But, the answering of those questionnaires—there were 315 questions—they were abusive, intolerable, immaterial and would have exposed registrars to possible criminal prosecution even if they had attempted to answer them in all frankness and candor.

If those questionnaires had been such that we could have answered them, it would have been done.

For instance, one of the questions said: "How well do you know the man who got you your job?"

The COURT. I have read the questionnaire.

Mr. GREENBERG. One of the questions was, that if a man comes to register and is a member of the NAACP, are you going to treat him fairly?

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129 How can that be relevant to a registrar of voters' duties? How can he know whether an individual, coming up to register, is a member of the NAACP?

The Court. That is not before the Court.

Mr. Gremillion. I understand, but I didn't want the Court to get the impression that Louisiana did not try to cooperate.

I offer the Commission, now, our complete cooperation if you will work with us. Give us the nature of the charges and allow us to face our accusers and we will work with you. If we find a registrar who isn't doing his duty, I will recommend to the Board of Registration that he be fired.

Thank you, very much.

The Court. Gentlemen, I will work on this tomorrow and probably it will be Sunday before I can issue my decision.

Court is adjourned.

[Reporter's certificate to foregoing transcript omitted in printing.]

131 In United States District Court for the Western District of Louisiana, Shreveport Division

Pre-trial exhibits & pertinent statutory provisions

Filed July 12, 1959

[File endorsement omitted.]

132 *Exhibit A to pre-trial brief, etc.*

RULES OF PROCEDURE FOR HEARINGS OF THE COMMISSION ON CIVIL RIGHTS

1. Under Public Law 85-315, Section 105(*f*), the Commission on Civil Rights may hold hearings and issue subpenas or authorize a subcommittee to hold hearings and issue subpenas under the following conditions:

"The Commission or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accord-

ance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman."

2. All such hearings of the Commission will be governed by the following statutory Rules of Procedure provided in Section 102 of Public Law 85-315:

"(a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

153 "(c) Witnesses at the hearings may be accompanied by the own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

154 "(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

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"(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 5 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business."

3. In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

"(a) All the provisions of Section 302 of Public Law 85-315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 302(c) of Public Law 85-315, incorporated in Rule 1 above. 155

"(b) At least two members of the Commission must be present at any hearing of the Commission or of any subcommittee thereof.

"(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at a meeting at which at least a quorum of two members is present.

"(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission or the Chairman or by the Chairman upon the request of a member of the Commission.

"(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee

appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

"(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may
156 be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

"(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

"(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

"(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

"(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

"(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, maga-
157 zines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap."

4. Public Law 85-315, Section 105(g) provides that in case of contumacy or refusal to obey a subpena of either the Commission or a subcommittee thereof, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the

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District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(As approved and adopted by the Commission July 1, 1958.)

158 *Exhibit B to pre-trial brief, etc.*

Public Law 85-315

85th Congress, H.R. 6127

September 9, 1957

AN ACT

71 Stat. 634

To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Civil Rights Act of 1957

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE OF THE COMMISSION

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Evidence or testimony

Release

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken

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in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

71 Stat. 635

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

Witness fees

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

Reports to President and Congress

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this Act.

Termination of Commission

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

159 71 Stat. 636

POWERS OF THE COMMISSION

Staff director

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and

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with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $50 per diem.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99).

62 Stat. 697 *et. seq.*

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

Hearings, etc.

Subpenas

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accord-

ance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

71 Stat. 637

PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

62 Stat. 932

SEC. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read,

"§ 1343. Civil rights and elective franchise"

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(b) Delete the period at the end of the paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Repeal

SEC. 122. Section 1989 of the Revised Statutes (42 U.S.C. 1993) is hereby repealed.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U.S.C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, four new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

160 "(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

71 Stat. 637

71 Stat. 638

"(e) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel."

PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPTS OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

Criminal contempt

Penalties

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: Provided however, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: Provided further, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: Provided further, however, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of

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the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

Nonapplicability

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

62 Stat. 951

SEC. 152. Section 1861, title 28, of the United States Code is hereby amended to read as follows:

"§ 1861. Qualifications of Federal jurors

71 Stat. 638

"Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

"(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(2) He is unable to read, write, speak, and understand the English language.

"(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service."

Short title

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

Approved September 9, 1957.

Exhibit C to pre-trial brief, etc.

(a) Notice of hearing and issues.

Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

UNITED STATES CODE, TITLE 5, SECTION 1005

Hearings; presiding officers; powers and duties; burden of proof; evidence; record as basis for decision.

In hearings which section 1002 or 1004 of this title requires to be conducted pursuant to this section—

(a) There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this chapter; but nothing in this chapter shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 1007 of this title shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences

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162 for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 1007 of this title, and (9) take any other action authorized by agency rule consistent with this chapter.

(c) Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 1007 of this title and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary. (June 11, 1946, ch. 324, § 7, 60 Stat. 241.)

163 *Clerk's note*

Exhibit D to pre-trial exhibits, etc. "Subpoena issued to Mrs. Margaret M. Larche, Registrar of Morehouse Parish," printed side page 20 supra.

164 *Clerk's note*

Exhibit E to pre-trial exhibits, etc. "Letter from Gordon M. Tiffany to Mr. W. M. Shaw, dated April 14, 1959," Printed side page 17 supra.

185 *Clerk's note*

Exhibit F to pre-trial exhibits, etc. Telegram from Gordon M. Tiffany to Honorable Jack P. F. Gremillion," printed *side* page 19 *supra*.

166 In United States District Court for the Western District of Louisiana

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 1

Section 1. Legislative power vested in Congress.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

AMENDMENT IV

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

Amendment V—Capital Crimes; Due Process

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. * * *

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[redacted]

LOUISIANA REVISED STATUTES, SECTION 18:221

§ 221. Violations generally; successive offenses

No person shall violate any provision of this Chapter for which no penalty is specifically provided, or wilfully fail or refuse to perform an act or duty required under this Chapter.

Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense.

168 LOUISIANA REVISED STATUTES, SECTION 14.134

§ 134. Malfeasance in office

Malfeasance in office is committed when any public officer or public employee shall:

(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

(2) Intentionally perform any such duty in an unlawful manner; or

(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

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169 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Civil Action No. 7480

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

[File endorsement omitted]

For the Plaintiffs in Civil Action No. 7479

Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana; George M. Ponder, First Assistant Attorney General, State of Louisiana, Baton Rouge, Louisiana; William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana; Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana; M. E. Culligan, New Supreme Court Bldg., New Orleans, Louisiana; John E. Jackson, Jr., New Supreme Court Bldg., New Orleans, Louisiana; William P. Schuler, New Supreme Court Bldg., New Orleans, Louisiana; N. Cleburn Dalton, 140 St. Louis Street,
170 Baton Rouge, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Albin P. Lassiter, Ouachita Parish Court House, Monroe, Louisiana; Fred Jackson, Homer, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Cameron C. Minard, Columbia, Louisiana; Lester Hughes, Natchitoches, Louisiana; Richard H. Kilbourne, Clinton, Louisiana; France Watts, Franklinton, Louisiana; J. Reuel Boone, Many, Louisiana.

For the Plaintiffs in Civil Action No. 7480

Mr. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana.

For the Defendants

Messrs. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; Berl R. Bernhard, Attorney for Commission on Civil Rights; A. William Mottolese, Attorney for Commission on Civil Rights; C. E. Clark, Legal Assistant to the Honorable Robert G. Storey.

BEN C. DAWKINS, Jr.,
Chief Judge.

171–177 *Ruling on applications for temporary restraining orders*

Filed July 12, 1959

We are called upon here to pass tentatively upon one of the burning issues of our time—the propriety and validity of the Rules and Proceedings of the Civil Rights Commission, as established by Congress in September, 1957.[1]

That Commission now proposes to hold a hearing, in the Federal Court room at Shreveport, Louisiana, on July 13, 1959, to investigate purported violations of the civil voting rights of some 67 persons, who are said to have filed sworn complaints with the Commission. Pursuant to, and in implementation of, its plans, the Commission has caused subpoenas, and subpoenas duces tecum, to be served upon the plaintiffs in these suits, commanding them to be present and give testimony at the hearing, and requiring the 16 Registrars of Voters, who are plaintiffs[2] in Civil Action No. 7479, to bring with them, for inspection and copying by the Commission, a large number of records from their offices.

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[1] Public Law 85-315, 71 Stat. 634, 42 U.S.C.A. § 1975a-c.

[2] These plaintiffs are the duly appointed and constituted Registrars of Voters in the Louisiana Parishes (counties) of Morehouse, Ouachita, Webster, Bossier, Claiborne, Bienville, DeSoto, East Carroll, Madison, Jackson, Red River, Caldwell, Caddo, East Feliciana, West Feliciana, and Washington, all but the last three of which are located in the northern part of the State.

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These suits, brought against the members of the Commission, and the Commission itself, were filed on July 10,
178 1959, and are addressed to the equitable powers of this Court.[3] They seek to stay the effectiveness of the Commission's subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing itself,[4] which, plaintiffs aver, under the Rules of Procedure adopted by the Commission, would violate their fundamental constitutional rights and cause them immediate and irreparable damage. Moreover, praying that a three-judge court[5] be convened for that purpose, the Registrar-plaintiffs ask that the Act creating the Commission be declared[6] violative of the Federal Constitution, and thus unenforceable.

Detailing their complaints, supported by sworn affidavits and exhibits attached, (and here briefly paraphrased), the Registrar-plaintiffs, in Civil Action No. 7479, allege that between June 29, 1959, and July 6, 1959, each of them were served with subpoenas and subpoenas duces tecum, issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959, and to bring their records with them; that they have not been informed of the nature of the complaint or complaints against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has
179 informed the Attorney General of Louisiana verbally and in writing,[7] that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine the written complaints filed against them, nor would it divulge the name or names of the secret complainants, all of which is arbitrary and unreasonable, and in violation of plaintiffs' fundamental rights.

They further aver that they, at all times, have complied with the laws of the State of Louisiana, but that the subpoenas

[3] Also alleging jurisdiction in this Court based upon Federal questions, 28 U.S.C.A. § 1331, and Diverse Citizenship, 28 U.S.C.A. § 1332.

[4] Pursuant to 28 U.S.C.A. § 2284(3).

[5] 28 U.S.C.A. §§ 2282, 2284.

[6] Under the Declaratory Judgment Statute, 28 U.S.C.A. § 2201, et seq.

[7] The writings are attached to the complaint.

served upon them would require them to violate such laws,[8] in that the Registrars' records legally may not be removed from their offices, except "upon an order of a competent court", criminal penalties being provided for violations of these
180 statutes;[9] and that the Commission is not a "competent court". Hence, they say, to comply with the subpoenas, they would be violating the State laws, and subjecting themselves to the penalties thus provided.

These plaintiffs further allege that, attached to the subpoenas served upon them, was a mimeographed document entitled "Rules of Procedure for hearings of the Commission on Civil Rights" in which appears the following: "(1) Interrogation of witnesses shall be conducted only by members of the Commission or by authorized staff personnel"; and that thereby plaintiffs are deprived of their constitutional right to cross-examine witnesses who may testify against them. They contend that the Commission and its members thus are acting in an ultra vires manner in 1) attempting to force plaintiffs to testify at the proposed hearing without first advising them of the nature of the complaint or complaints existing; 2) without allowing plaintiffs to be confronted by the complaining witnesses; 3) not allowing plaintiffs to have counsel em-

[8] L.S.A.-R.S. 18:169. *"Control and custody of registration books and other records.*

"The books of registration, together with all the records, registry stub books, and all other books and paraphernalia used for the conduct of the registrar's office, shall at all times be kept under the control of and in the custody of the registrar at his principal office. They shall not be removed therefrom for any purpose except upon an order of a competent court, except the parish register and registration certificate books when these are necessary for the registration of voters, when registration is permitted at places other than at the central office.

L.S.A.-R.S. 18:251. *"Custody of records.*

"Except as otherwise provided in this Title, the registers, records, files, books, and paraphernalia used for the conduct of the registrar's office shall at all times be kept under the control and in the custody of the registrar at his principal office and shall be removed therefrom only on order of a competent court. Added Acts 1952, No. 415, § 2."

[9] L.S.A.-R.S. 18:221. *Violations generally; successive offenses.*

"No person shall violate any provision of this Chapter for which no penalty is specifically provided, or willfully fail or refuse to perform an act or duty required under this Chapter.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense."

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powered to fully represent their interests in such hearing; 4) not allowing cross-examination of the complaining witnesses; and 5) causing irreparable damage to plaintiffs by requiring them to violate the Laws of Louisiana, which would subject them to serious criminal penalties. In their brief, they also urge, as a direct incident of the hearing itself, with unnamed and unknown witnesses testifying against them, not subject to cross-examination by plaintiffs' counsel, that
181 they will be wrongfully accused of violations of both Federal [10] and State [11] laws, without adequate opportunity to disprove such accusations, and thus be held up, by the Commission's actions, to public opprobrium and scorn, all to their irreparable injury and damage.

They further contend that the Commission, being an agency of the Executive branch of the Federal Government, is subject to the provisions of the Administrative Procedure Act,[12] and,

[10] 18 U.S.C.A. § 242. *"Deprivation of rights under color of law.*

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

42 U.S.C.A. § 1983. *"Civil action for deprivation of rights.*

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979."

[11] LSA–R.S. 14:134. *"Malfeasance in office.*

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

And see LSA–R.S. 18:221, fn. 9.

[12] 5 U.S.C.A. §§ 1001, et seq.

as such, is required to state explicitly the charges against plaintiffs, to permit them to be confronted with the witnesses against them, and to allow their counsel fully to cross-examine such witnesses. Accordingly, these plaintiffs seek the relief hereinabove outlined.

182 In general, the plaintiffs in Civil Action No. 7480, who are individual citizens of Louisiana, make the same allegations and contentions as those in No. 7479, except that they have not been called upon to produce any official records. They do not challenge the constitutionality of the Act creating the Commission, but otherwise their prayer for relief is substantially similar to that in No. 7479.

Several days prior to July 10, 1959, we were advised by plaintiff's counsel that they would file these suits on the date indicated. While, as a general rule, applications for temporary restraining orders are considered ex parte, solely on the face of the verified complaint and any attached documents, because of the national importance of the matters involved, we immediately notified counsel for the Commission, and its Vice-Chairman, Honorable Robert G. Storey (a personal friend of the Court's, of long standing) of our information, and invited them to be present for a hearing on the applications. The suits were filed at 1:30 P.M. on July 10, and at 2:00 P.M., in open Court, these gentlemen, and counsel for plaintiffs, being present, we convened Court, but immediately recessed in order to give the Commission's representatives opportunity to study the complaints and briefs filed by plaintiffs. At 3:30 P.M., we reconvened and heard oral arguments, from both sides, until 5:20 P.M., at which time the matter of the restraining orders was submitted for decision on the oral arguments and briefs filed by the proponents and opponents of the applications. We have considered the able arguments, studied the respective briefs and authorities cited, and now proceed to our ruling. Necessarily, because of the time element, we have been compelled, under great pressure, to consider the questions rather hastily; and we reserve the right to alter ourviews, if necessary, after more mature deliberation.

183 The Court has jurisdiction. 28 U.S.C.A. §§ 1331, 1332, 2201, 2282, 2284. *Jones* v. *Securities Commission*, 298 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.

We are not strongly impressed with the Registrar-plaintiffs' contention that the subpoenas duces tecum if complied with,

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would subject them to criminal penalties under Louisiana law. Literally, of course, if they directly complied without more, they are correct in their understanding of the State law. Practically, however, another and different aspect is presented, for under the Civil Rights Commission Act they can refuse to produce the records, without penalties of any kind, and the only recourse the Commission would have would be to request the Attorney General of the United States to apply to this Court, under 42 U.S.C.A. § 1975d(g) [13] for an order requiring their production. Plaintiffs then would be protected against
State prosecution by the very terms of LSA–R.S.
184 18:236,[14] as well as by LSA–R.S. 18:169 (see fn. 8),
for this Court clearly is a "competent court", within the meaning of those Statutes.

Likewise, plaintiffs would suffer no immediate federal penalties under the Act for refusal either to appear or to testify,

[13] "*Aid of courts in enforcing subpoenas.*

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Pub. L. 85–315, Part I, § 105, Sept. 9, 1957, 71 Stat. 636."

[14] "§ 236. *Alteration, defacing, destruction or removal of records; penalty.*

"No registrar, deputy, clerk, or employee of any registrar, or any person having, or having been given access to, or right of inspection, copying or photographing of any book, card, record, or other document pertaining to the registration of voters, shall illegally or improperly alter, add to, deface, destroy, or remove same from the custody of the registrar.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than sixty days nor more than two years. However, nothing in this Section prevents a competent court from requiring, by proper order, the production by the registrar in court, in any proceeding pending therein, of any document, book, card, or record necessary and material, in the opinion of the court, to the determination of the proceeding; such documents do not become permanent records of the court, but shall be returned to the custody of he registrar immediatley after inspection by the court. The court may require a photostatic copy thereof to be placed in the record. Added Acts 1952, No. 415, § 2."

but would be subject to an enforcement order from this Court, which would see to it that their constitutional rights against self-incrimination are adequately protected. Moreover, under the Act, since their counsel are entitled to be present, they could be advised, at each step of the proceedings, whether to claim the protection of the Fifth Amendment, even though, in this day, the general public has come to consider such a claim as tantamount to a plea of guilty, particularly in response to "loaded" questions.

We are strongly of the opinion, however, that plaintiffs' remaining grounds for immediate relief are well taken:

First, it appears rather clear, at this juncture, that the Civil Rights Commission is an "agency" of the Executive branch of the United States, within the meaning of that term as
185 defined at 5 U.S.C.A. § 1001(a).[15] See also 42 U.S.C.A. § 1975(a).[16] It performs quasi-judicial functions in its hearings, its fact findings, its studies of "legal developments constituting a denial of equal protection of the laws under the Constitution", and its appraisal of "the laws and policies of the Federal Government" in the same respect.[17] It "adjudi-

[15] "(a) 'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, * * *."

[16] § 1975. *Commission on Civil Rights—Establishment.*

"(a) There is created in the *executive branch* of the Government a Commission on Civil Rights (hereinafter called the 'Commission')." [Emphasis supplied.]

[17] 42 U.S.C.A. § 1975c. *"Duties; reports; termination.*

"(a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

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cates" by its rulings upon the admissibility of evidence at its hearings and by its determinations of what is or is not the truth in matters before it. Thus we think that the Commission is subject to the provisions of section 4 of the Administrative Procedure Act,[18] which requires, among other things that persons affected by agency action "* * * shall be timely
186 informed of the matters of fact and law asserted." Here that would encompass the nature of the charges filed against plaintiffs, as well as the matters of fact and law wherein the complainants' voting rights allegedly have been violated. The Commission also is subject to section 6 which would require it to grant plaintiffs the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts."[19] This, by its Rules, the Commission refuses to do, and in so doing, regardless of its well intentioned motives, it violates the terms of that Act. Plaintiffs are entitled, therefore, to protection against these Rules, which would deprive them of their plain rights under the Act.

Second, while the statute creating the Commission inferentially permits it to adopt reasonable Rules, 42 U.S.C.A. § 1975 (b), there is no provision whatsoever in the law to the effect that such Rules may include those here complained of, which

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"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957."

[18] 5 U.S.C.A. § 1004. "*Adjudications.*

* * * * *

"(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) *the matters of fact and law asserted.* * * *" [Emphasis supplied.]

[19] 5 U.S.C.A. § 1009. "*Hearings, presiding officers; powers and duties; burden of proof; evidence; record as basis for decision.*

* * * * *

"(c) * * * Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. * * *"

plainly violate plaintiffs' basic rights to know in advance with what they are charged, to be confronted by the witnesses against them,* and to cross-examine their accusers. We cannot believe that Congress intended to deny these fundamental rights to anyone, and because of such belief it is our opinion that these Rules of the Commission are ultra vires and unenforceable. Therefore, plaintiffs are entitled to immediate relief against them.

187 Third, entirely aside from the statutory questions just discussed, the Courts of the United States, and their Anglo-Saxon predecessors, always have seen to it that, in hearings or trials of all kinds, persons accused of violating laws must be adequately advised of the charges against them, confronted by their accusers, and permitted to search for the truth through thorough cross-examination. In Jones v. Securities Commission, 298 U.S. 1, 27, 57 S. Ct. 654, 80 L. Ed. 1015, the Supreme Court said:

"* * * 'A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end.'

"The fear that some malefactor may go unwhipped of justice weighs as nothing against this just and strong condemnation of a practice so odious. * * *

"The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. *An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by*

* 42 U.S.C.A. § 1975a (g) indefinitely authorizes the Commission to sit in executive or closed session. Apparently pursuant to this, the Commission's Rules 2 (c) and (g) were adopted. They do not guarantee, or apparently even permit, the person accused at such an executive session to be present to confront the witness or witnesses against him.

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what it actually succeeds in bringing, to light. * * *" (Emphasis supplied.)*

In Morgan, et al v. United States, et al, 304 U.S. 1, 14, 20, 25, 58, S. Ct. 773, 82 L. Ed. 1129, involving an administrative hearing, the Court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by
183 adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing,'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.' * * *

* * * * *

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. * * *

* * * * *

"Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. * * *"

In the most recent decision on this subject, handed down by the Supreme Court on June 29, 1959, Greene v. McElroy, No. 180, October 1958 Term, —— U.S. ——, —— S. Ct. ——, —— L. Ed. ——, 27 L.W. 4528, 4534, 4539, and speaking through Chief Justice Warren, the following language is found:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the indi-

vidual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or partisanship. We have formulated these protections in the requirements of confrontation and cross-examination. They have ancient
360 roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., Mattox *v.* United States, 156 U.S. 237, 242-244; Kirby *v.* United States, 174 U.S. 47; Motes *v.* United States, 178 U.S. 458, 474; In re Oliver, 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., Southern R. Co. *v.* Virginia, 290 U.S. 190; Ohio Bell Telephone Co. *v.* Commission, 301 U.S. 292; Morgan *v.* United States, 304 U.S. 1, 18; Carter *v.* Kubler, 320 U.S. 243; Reilly *v.* Pinkus, 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. Joint Anti-Fascist Committee *v.* McGrath, 341 U.S. 123, 169-170 (concurring opinion).

"Professor Wigmore, commenting on the importance of cross-examination, states in his treatise, 5 Wigmore on Evidence (3d ed. 1940) § 1367:

" 'For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sifted by that test, has found general strength in lengthening experience.'

* * * * *

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., The Japanese Immigrant Case, 189 U.S. 86, 101; Ng Fung Ho *v.* White,

vel non can be determined by the three-judge court after hearing on plaintiffs' application for an interlocutory injunction. See Ohio Oil Co. v. Conway, 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972, where the Supreme Court stated, in a per curiam opinion:

"The application for an interlocutory injunction was submitted on ex parte affidavits which are harmonious in some particulars and contradictory in other. The affidavits, especially those for the defendant, are open to the criticism that on some points mere conclusions are given instead of primary facts. But enough appears to make it plain that there is a real dispute over material questions of fact which can not be satisfactorily resolved upon the present affidavits and yet must be resolved before the constitutional validity of the amendatory statute can be determined.

* * * * *

"Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. Love v. Atchison, Topeka & Santa Fe R. Co., 185 Fed. 321, 331–332."

In Crockett v. Hortman, 101 F. Supp. 111, 115, at page 115, Judge Wright, of the Eastern District of Louisiana, dealing with the constitutionality of a State statute, said:

"Where as here the questions presented by an application for a temporary injunction are grave, and the injury to the moving parties will be certain and irreparable if the application be denied and the final decree be in their favor, while if the injunction be granted the injury to opposing parties, even if the final decree be in their favor, will be inconsiderable, the injunction should be granted. Ohio Oil Co. v. Conway, 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972.

192 "The determination of the grave constitutional issues presented in this case should not be decided without a trial on the merits, Polk Co. v. Glover, 305 U.S. 5, 59 S. Ct. 15, 83 L. Ed. 6, and a temporary injunction should be issued in order that the status quo may be preserved until that time."

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To the same effect, see also Burton, et al. v. Matanuska Valley Lines, Inc., 244 F. 2d 647.

This, then, is another ground upon which plaintiffs are entitled to the immediate relief they seek.

For these reasons,[21] the applications for temporary restraining orders will be granted.

Thus done and signed, in Chambers, at Shreveport, Louisiana, on this the 12th day of July, 1959.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.

193 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Temporary restraining order

July 12, 1959

[File endorsement omitted.]

Upon the verified complaint heretofore filed herein, and upon motion by complainants for a preliminary injunction and for a temporary restraining order against defendants, it appearing to this Court that the complaint seeks a judgment and enjoining the defendants, John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan; Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas; John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana; Doyle E. Carlton, whom complainants allege to be a

[21] Nothing that we have said, in ruling upon these cases, is intended in any way to reflect upon the Commission, its members or its staff, all of whom, we are sure, are honorable gentlemen.

resident of Tampa, Florida; George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C., individually and in their capacity as members of the Commission on Civil Rights created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., their agents, servants, em-
194 ployees and attorneys from enforcing, attempting to enforce, proceeding under, or holding any hearings pursuant to Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., and the rules of procedure promulgated pursuant thereto as concerns complainants herein and others similarly situated upon the ground, among others, that the aforesaid statute is unconstitutional, this Court finds that irreparable damage will be caused to complainants unless a temporary restraining order is issued against the said defendants, and all of them, for the reasons stated in a written ruling this day filed, and made part hereof by reference.

Now, therefore it is ordered, adjudged and decreed that the said, John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan; Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas; John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana; Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida; George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C., individually and in their capacity as members of the Commission on Civil Rights, created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., together with their agents, servants, employees and attorneys, be restrained temporarily and enjoined from proceeding under or holding any hearings pursuant to said Public Law, as concerns complainants herein and others
195 similarly situated, and particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, Louisiana, until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three judges, to be held, as hereinafter ordered, on July 22, 1959.

It is further ordered that a rule nisi issue herein, directed to said parties hereby restrained, commanding them to show

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cause, if any they can, at 9:30 a.m. July 22, 1959, at the Federal courtroom, 3rd floor, United States Post Office and Courthouse, Shreveport, Louisiana, why the preliminary or interlocutory injunction prayed for by plaintiffs, should not be granted.

Issued at Shreveport, Louisiana, at 5:12 o'clock p.m., this 12th day of July, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

197 In the United States District Court for the Western District of Louisiana, Shreveport Division

No. 7479 Civil

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7480 Civil

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

Transcript of proceedings

Filed July 13, 1959 and July 30, 1959

Proceedings had in the above-entitled matters before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Shreveport Louisiana, July 13, 1959, at 11 o'clock a.m.

198 Appearances: Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol Baton Rouge, Louisiana. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana. Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana. Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, Louisiana. M. E. Culligan, New Supreme Court Building, New Orleans, Louisiana. John E. Jackson, Jr.,

New Supreme Court Building, New Orleans, Louisiana. Thompson L. Clarke, St. Joseph, Louisiana. Edwin L. Blewer, Caddo Parish Courthouse, Shreveport, Louisiana. For Plaintiffs.

Berl I. Bernhard, Attorney for Commission on Civil Rights.
Ben Brooks, Department of Justice, Washington, D.C.
199 D. Robert Owen, Department of Justice, Washington, D.C. T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana. Charles E. Clark, Legal Assistant to Robert G. Storey. For defendants.

Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

Colloquy

The COURT. Last night, at about 6 o'clock, after the Court had gone to its home, we received a telephone call from Mr. Bernhard, representing the Civil Rights' Commission, inquiring as to the possibility of the Court's requiring plaintiffs in this case to file a bond as security against possible damage and expense which may, or might, have been incurred by the Civil Rights' Commission in connection with the restraining order.

We told Mr. Bernhard that no one had called this matter to the Court's attention, and in the press and under the duress of the time element necessarily involved in the Court's actions, that we had not given serious consideration to this matter.

200 We will be glad now to hear from you, Mr. Bernhard, or anyone else representing the Commission, on your verbal motion that security be posted by the plaintiffs.

All right, sir.

Mr. BERNHARD. May it please the Court, I am entering a limited appearance to the same extent that I entered in the proceeding the other day.

As the Court is well aware, we received notification of the Attorney General and other parties to restrain our hearing, approximately 72 hours before the hearing, and as the Court well knows, we received notification of the restraining order about 5 o'clock yesterday afternoon.

We are asking, under Rule 65, for relief.

The Commission, upon consideration of its responsibility, and its relationship to the Attorney General, has asked that the

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Attorney General come into this case to represent the Commission.

A telegram went out to the Attorney General last night, and this morning the Attorney General has indicated acceptance of this case. From this point on, no member of the Commission on Civil Rights will represent the Commission in any
201 legal proceedings, and at this point, I would like to turn over to the United States Attorney for this District the motion we wish to make.

The COURT. Let me ask this question before you sit down: the Court received, a few minutes ago, a short memorandum brief on behalf of the plaintiffs.

Have you received a copy of that?

Mr. BERNHARD. Yes, sir.

The COURT. Have you had occasion to read the Toreau case?

Mr. BERNHARD. No, sir.

The COURT. Would you like to do so? I have it here on the desk.

Mr. BERNHARD. I would like to do that.

Let me say this: Although I have not read that particular case, we have researched the point and believe, on the law, as well as the facts, we are entitled to the relief we request.

The COURT. Would you like to see that case, Mr. Wilson, before you speak?

Mr. WILSON. Yes, Your Honor.

The COURT. I might say, from our hasty reading of that section of the decision which is marked in pencil, it appears to us, the Fifth Circuit Court of Appeals held that the question of whether the bond should be required is one addressing
202 itself to the sound discretion of the Court rather than being a mandatory request under Rule 65(c), as Mr. Bernhard indicated last night.

Mr. BERNHARD. We are in complete accord, regardless of the mandatory language of Rule 65(c), and we do not wish to contest that point at all.

The COURT. All right, sir.

Mr. WILSON. May it please the Court, I, as United States Attorney, have been requested by the Attorney General of the United States to represent the Civil Rights' Commission, and

also the Department of Justice, whose representatives are here, Mr. Ben Brooks of the Civil Rights' Division of the Department of Justice, and Mr. Owen, and we would like to ask the Court to modify the restraining order to the extent of requiring bond from the plaintiffs, in the amount of $10,000, and in support of that, while the Government agrees it is discretionary with the Court as to whether or not the bond should be required and the amount thereof, still we have a case here which we have not had an opportunity to read, as yet. It is merely a citation and annotation, which is the case of Benz, et al. vs. Compania Naviera Hidalgo, S.A., 205 F. 2d, 944, cert. denied; 74 Supreme Ct. 135, 346 U.S. 885, which says, in the absence of bond——

The COURT. What circuit decided that?

Mr. WILSON. I am unable to tell from this annotation.

203 The COURT. I will check it at the proper time.

Mr. WILSON. In the absence of bond, or security, there may be no recovery of damages for issuance of temporary injunction, even though it may have been granted without just cause.

The COURT. In other words, do I understand you to say the Commission, or the United States, itself, would have no right under that decision to sue these plaintiffs in damages if ultimately this court's decision granting a restraining order is set aside?

Mr. WILSON. That is correct, Your Honor.

That is the position the Government takes at this time.

The COURT. What is the authority for that position?

Mr. WILSON. That case.

The COURT. What authority does the case cite?

Mr. WILSON. I haven't had a chance to read it. I just picked this up now.

We are prepared to offer testimony at this time, if the Court would like to hear it, as to the out-of-pocket expenses of the Commission, in preparation of this hearing.

204 The COURT. Let me ask the attorneys for the plaintiffs if they have any objection.

Mr. GREMILLION. In other words, if the Court wishes to hear that testimony, we certainly have no objection to that, but I would like to say this: the temporary restraining order issued by the Court certainly doesn't stop the Commission

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from having an executive session in Shreveport. It doesn't stop it from discussing any matters they wish to discuss. It only enjoins them from hearing complaints concerning these particular complainants, and other than that there is absolutely no reason why the Commission, which I understand is at Barksdale Field right now—there is no reason why they cannot have a meeting at the present time. They are entitled, under the law, to their per diem and their particular expenses. They could leave here and go to New Orleans and hold a meeting. They are in Bossier Parish right now. They could come here and hold a meeting.

The COURT. Let me inquire of Mr. Wilson. He may be able to answer this: without knowing, I surmise that the entire subject matter of the hearing which was proposed for today in this Courtroom by the Commission dealt exclusively with complaints against the plaintiffs in this action.

Mr. BERNHARD. That is the understanding that, I, too. had.

205 We had understood from the wording of your order that we were restrained from holding a hearing. In view of that, we did not feel we could put ourselves in the jeopardy of assuming we could interpret the opinion of this Court to go back to our own rules and say it would allow us to have an executive session.

We didn't think, since the executive session point was argued, that we had any right to go ahead with the hearing today.

The COURT. It is your understanding that the subject matter of the proposed hearing was to be exclusively concerning complaints made against these plaintiffs?

Mr. BERNHARD. That is correct.

Mr. GREMILLION. This is the first official informal notice that we have ever had, because under the rules served upon the complainants, there is one little section which says that the purpose of the hearing will be announced by the chairman when the Commission convenes.

The COURT. That is correct. I believe that is required by the Statute creating the Commission.

Mr. GREMILLION. For that matter, the Commission certainly could have still met here this morning and discussed, maybe, discrimination in housing problems.

As far as the executive session being intolerable, I cer-
206 tainly agree with that and I still subscribe to that theory. But, the Commission is still clothed with that authority, and I am informed several of them are still at Barksdale Field and they may be having an executive session, right now, but we don't care as long as they are not discussing these particular complaints against registrars.

The COURT. I think we better hear from Mr. Shaw.

Mr. SHAW. I have objection to the testimony as outlined by the United States Attorney.

Your Honor will recall that both of these suits—and I am primarily interested in No. 7480—both suits are against six individuals, in their individual capacity, and as members of the Commission, but only against those individuals. This is not a suit against the United States. Were it so, we would have to proceed differently. It is not a suit against the Civil Rights' Commission as an entity.

As a matter of fact, a suit of that type cannot be brought against a Federal agency. The injunction enjoins those individuals, and their agents. It does not enjoin the United States. It does not enjoin other parties. The bond should be for the protection of those individuals. Showing what costs
the United States might be out, is not relevant, in my
207 opinion, to a bond to protect individuals against losses which they might sustain. I think the bond should go no further than to protect what the six individuals themselves might sustain—what losses those individuals might sustain, or their agents would sustain, as individuals, by virtue of this particular injunction.

I repeat, again, in these civil rights' cases, Your Honor found the Toureau case and the Ludley case, and both cases have gone out of their way to hold these bonds are not necessary. They have never given a bond, even though it involved the possible shutting down of the entire school system in one of the largest places in the South, such as, New Orleans.

I think the Court has taken an extremely liberal viewpoint in not imposing an excessive bond.

Mr. WILSON. The suit is against the individuals as members of the Civil Rights' Commission. This is not an expense of the United States Government, but of the Commission itself.

The COURT. Would not the Government ultimately pay the bill?

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Mr. WILSON. Yes. All the people of the United States will ultimately pay the bill.

The COURT. Are not the travel expenses of the Commission itself paid out of appropriations made by
208 Congress?

Mr. WILSON. Yes, Your Honor.

The COURT. Subject to Mr. Shaw's objection, we will hear the testimony we have as to the expenses.

Mr. GREMILLION. We would like it understood that there may be certain objections made to the testimony as it comes up.

The COURT. Oh, yes. It will be an adversary proceeding, Mr. Gremillion, and you will be entitled to cross-examine all witnesses.

Mr. BERNHARD. Preliminarily, if the Court please, I would like to answer these gentlemen.

First, the point the Attorney General made that this Commission is down here and they could do other things, are not specious. The Commission has been preparing for this hearing for a considerable period of time. They came down, and they were down here before they had an opportunity to prepare for anything else. You do not set up a discussion of housing, or education, on the spur of the moment.

For all intent and purposes they are down here and find there is nothing they are capable of doing.

As far as the objection by Mr. Shaw, it may be some
209 of the Commissions are named in an individual capacity, and to that extent they are responsible for accounting a fiduciary relationship to the Commission. They are, also, in that representative capacity, regardless of how they may be represented. They are not completely individuals. I think it is important to point that out.

The COURT. Of course, if they were simply individuals and no more, they wouldn't be here.

Mr. BERNHARD. That is perfectly correct.

May I have a moment, if the Court please?

The COURT. Yes.

Mr. BERNHARD. If the Court please, I have, in the short period of time allowed, discussed this matter with Mrs. Carol Arth, who is present in the room today. She is the executive secretary of the Commission on Civil Rights and responsible for all budget matters. We have gone over our reports and

picked out the expenses which could not be recovered if it should follow that the Court's ruling of yesterday should be set aside.

By agreement with the United States Attorney, I would like to read into the record what these expenses are.

If it is the desire of the Court to have me take the stand to do so, I will be happy to do so.

Mr. GREMILLION. We object. We would like to have
210 him take the stand and testify.

The COURT. All right.

BERL I. BERNHARD, called as a witness on behalf of the Civil Rights' Commission, being first duly sworn by the Clerk, testified as follows:

Mr. GREMILLION. At this time, we will ask that any witnesses they intend to use with reference to financial expenditures, we ask for the severance of those witnesses.

The COURT. Do you have any other witnesses you propose to call besides yourself?

Mr. BERNHARD. It may be necessary, if the Court so desires, to call Mrs. Carol Arth.

The COURT. We better have Mrs. Arth placed under the rule and have her retire to the witness room.

(Whereupon, at this point, Mrs. Carol Arth was sworn by the Clerk.)

The COURT. Mrs. Arth, do not discuss the case before the Court with anyone else except your attorneys until this hearing is through.

Is that clear?

Mrs. ARTH. Yes, sir.

(Whereupon, at this point, Mrs. Carol Arth left the Courtroom.)

211 Mr. BERNHARD. May I give my testimony in narrative fashion?

The COURT. Do you object?

Mr. GREMILLION. We will see what happens when he starts.

Direct examination by Mr. WILSON:

Q. Mr. Bernhard, will you relate to the Court the expenses of the Commission with reference to the preparation of this hearing?

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Mr. GREMILLION. If the Court please, it is obvious from the remarks made by this witness, that his testimony will be hearsay.

The COURT. Do you know whether this is hearsay, or not? You are an attorney. Do you have personal knowledge as to the matters you will testify about, or is it something Mrs. Arth, or someone, has told you?

The WITNESS. I have sat down with Mrs. Arth and gone over firsthand the records we have kept.

I should also say we have gone over the records in the office under the supervision of Colonel Rosenfeld. I don't believe it would be hearsay, unless, under those circumstances——

The COURT. Do you have the original records?

212 The WITNESS. No; I do not.

The COURT. Where are they?

The WITNESS. They could be found at Barksdale.

The COURT. Wouldn't they be the best evidence?

The WITNESS. They are in great detail and they might be the best evidence. I intended to explain to the Court what the sum totals were, and it was my feeling, unless the Court were to feel otherwise, these could stand on themselves, and I would assume, I would be testifying as an attorney, and I certainly could assure the Court these are correct, and I will give my attorney's oath in that respect.

The COURT. Gentlemen, at that point, I think it is necessary for the Court, like we say in the vernacular, to lay down some ground rules for this hearing.

This is a matter being tried by the Court without a jury. It is a matter, which both sides concede, is addressed to the sound discretion of the Court.

We have no reason whatever to question the truthfulness of what Mr. Bernhard will testify to.

For that reason, I am going to permit him to proceed, even though the best evidence is as just stated, out of deference and courtesy to him.

Proceed.

213 The WITNESS. I appreciate it, Your Honor.

The following are a list of expenses, giving the dates that they were incurred by the Commission during its investigative stage in preparation for this hearing.

The figures themselves have been rounded off, so that if the figures, for example, were $351, we might put down $350. That is the way it stands.

From February 27, to March 2, two investigators of the Commission on Civil Rights were in Louisiana for preparation on an investigative capacity for this Commission, and their total expenses were $350.

The COURT. I don't believe that would be a relevant item. Any investigation made by the Commission in advance of the proposed hearing would be expenses which certainly should be absorbed by the Commission, and I don't believe these plaintiffs would be liable for that, under any circumstances.

The WITNESS. If the Court please, the investigators were sent down exclusively and solely to determine what certain allegations were that were received by the Commission.

Under the Statute, we are required to show we have received certain complaints. It is anticipated under the Act,
214 that upon receiving these complaints and investigating them, we shall hold a hearing.

It would be my feeling all of these investigators' expenses were expenses incurred directly in connection with holding a hearing.

The COURT. Those expenses would have been incurred, in the opinion of the Court, whether or not the hearing was to be held.

We rule now that those would not be considered by the Court.

The WITNESS. I will strike out from the list, all the investigations which were made preliminary to the Commission setting a hearing.

May I ask Mr. Clark the date, so I don't have to go through all this myself—the date the Commission finally set the hearing?

Mr. CLARK. June 10.

The WITNESS. I will leave out all expenses preliminary to June 10.

From June 30 to July 3, one of the members of the Commission was engaged in the service of the Commission.

Mr. GREMILLION. Which one? If Your Honor please, I think we ought to know who that member was?

The COURT. I think you are entitled to know that. Tell him who it was.

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215 The WITNESS. Mr. Norman Simpson, an investigator on the Investigative Staff.

Mr. GREMILLION. If Your Honor please, I understood the Court's ruling a moment ago that we were going to be concerned with the alleged expenses of the defendants in this matter. Mr. Simpson is not a defendant. I don't know who he is.

The COURT. He is speaking of expenses incurred by the Commission, as such.

Mr. GREMILLION. Pardon me.

The WITNESS. June 30 to July 3, $350.

The COURT. That was serving subpoenas?

The WITNESS. That is correct.

Two investigators, and I will name them, Mr. Anthony Mondello and Burton Goodyear, from June 22 to June 30, were interviewing witnesses in preparation for the hearing, and their total expense was $700.

Between June 20 to June 26, Mr. Ward Binell and Mr. Ray Miller were interviewing witnesses, and their total expense was $450.

From June 16 to June 23, Mr. Norman Simpson and Mr. Downs, were conducting investigations, or interviewing witnesses, and their total expenses were $550.

216 From June 18 to June 28, Mr. Ward Binell and Mr. Miller, were performing the same functions, interviewing witnesses, in preparation for the hearing, and their total expenses were $800.

On June 22 through June 25, Mrs. Carol Arth was making preparations for the accommodation for the Commission itself and for the use of the Courtroom and her total expenses were $400.

I might add, in explanation of what these expenses include. They include the air transportation, round trip, the per diem, which is $12 a day for all government employees, the expenses of either renting cars or using taxis, and telephone calls, which were made in line of official duty.

The total telephone calls which were made in the line of official duty—I would have to break this down in view of the ruling of the Court—were over $300.

In further specific preparation, we subpoenaed 17 registrars and one former registrar, as well as 40 witnesses who are not state officials.

The mileage for all these subpoenas, which is required to be paid under the Act, amounts to $1,340.

Mr. SHAW. We would like the names of each one of those subpoenaed.

217 Mr. GREMILLION. Mr. Shaw, we will cross-examine him.

Mr. SHAW. I understood the Court instructed him to itemize them.

The COURT. I know what you are driving at.

I will take his word for that.

The WITNESS. The minimum per diem for the witnesses attending is $250. That requires an explanation as to whether or not this should be included—it will depend on how many of the witnesses appear, and we will have to determine this later in view of the fact that some of the witnesses may come here without notification by the Commission of the restraining order.

The United States Marshal's fees for serving the subpoenas amounted to $125.

An advance party of six members of the Commission arrived on July 5 and have been here ever since. Including their salaries, the cost of transportation——

The COURT. Staff members?

The WITNESS. Yes.

The use of rental cars, the total cost is $1,920.

Dean Robert Storey, a Commissioner, as a result of
218 the recent litigation which has been started, was required to make two trips to Dallas during this week, and at $50 per day, plus the per diem and his cost of transportation, it amounts to slightly over $200. We put down $200.

There are now, at Barksdale Air Force Base, six commissioners. Their total travel expenses amount to over $500, plus $50 a day which they receive, and $12 per diem——

The COURT. What does that total?

The WITNESS. That totals $1,100.

I would like to mention another item, and this would be subject to the Court's ruling.

It is relevant to the holding of this hearing.

At recent conferences held by the Staff Director, Mr. Gordon Tiffany, with the Attorney General and Governor of Louisiana——

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Mr. GREMILLION. Mr. Tiffany came as my guest. He was wined and dined and it was paid for by the Attorney General of Louisiana, except his hotel room and his transportation.

The COURT. Did Mr. Tiffany charge per diem for that, too?

The WITNESS. I couldn't tell you that. Those are the basic expenses.

219 In view of the Court's ruling, whereas I had initially calculated that the expenses which we do not believe could be recovered, if we were to hold another hearing, and we have to make these expenditures again, amounted to $12,256.

If the Court will give me a minute, I can strike out the items in accordance with your ruling and tell you what the present sum amounts to.

The COURT. It strikes me, offhand, that any expenses incurred in investigation, or interviewing witnesses, and matters of that kind, properly could not be assessed as costs, any more than could attorneys' fees, and that sort of thing.

The only thing I am giving any serious consideration to, out of this list you have, is such things, for example, as their coming here for these past few days, the Commission members and Staff members; the necessary mileage and per diem of witnesses who were summoned and who appeared—that is, who actually appeared here today and did not learn of the restraining order in time for you to stop them from coming.

The WITNESS. May I say one thing?

The COURT. Yes, sir.

The WITNESS. We feel, certainly, that since the Com-
220 mission set down a hearing on June 10, they had a choice of whether or not to have one on the basis of the recommendations of investigators and the staff. Had they decided not to have one, no expenses would have been incurred by the investigators and the staff and legal staff, and we feel very strongly that all of these expenses are directly connected with this hearing and they represent out-of-pocket costs of the Commission itself.

The COURT. I see your point, but I don't necessarily agree with you.

The WITNESS. I can't force that.

Those are the total expenses we have, and those are the ones we feel we cannot recover, and if we were to be sustained in our suit, which is now in the hands of the Attorney General, we would expect these expenses would have to be undergone again

by the Commission, and therefore, they represent out-of-pocket loss to the Commission right now.

The COURT. Do you wish to cross-examine Mr. Bernhard?

Mr. GREMILLION. Yes. Mr. Lassiter will conduct the cross-examination.

Mr. SHAW. May it please the Court, there are two cases involved here. I may want to cross-examine.

The COURT. All right.

221 Cross-examination by Mr. LASSITER:

Q. Mr. Bernhard, if I understand your testimony correctly, you had personally checked the itemized accounts of the various investigators, and so forth, in compliance with this statement?

A. I will explain in detail what happened:

We have been required, in the interest of proper budgeting, to submit at the end of every day a list of all people doing work for the Louisiana hearing.

I have submitted one for the law section.

Colonel Rosenfeld submitted for the investigators, and overall supervision and co-ordination has been with Mrs. Carol Arth.

I have gone over, this morning, the copies of the reports I submitted, and that of Colonel Rosenfeld and we discussed both of them.

Q. Then, you have examined these reports which were made—daily or weekly reports that were made?

A. That is correct.

Q. For example, this business of $350 to Norman Simpson from June 30 to July 3——

A. Right.

Q. Did you have a report to substantiate that expense?

222 A. The report I had on that was, and I will tell you what it included, and I am giving you the best of my recollection.

It was $141 for round trip air expense. The per diem is $12 a day. The cost of using a rental car, and the cost of Mr. Simpson's salary while he was down here.

Q. You include in that $350 his salary. He is on an annual basis?

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A. That is correct, and we did that on the principle that he would have been doing other things had he not been down here in preparation for this hearing.

Q. Then, that same principle applies to all of these other people, the same as these investigators?

A. Perfectly true.

Q. Mr. Bernhard, in looking at these reports, about which you have testified, do they outline the names and addresses of the witnesses that they interviewed?

A. Some of them do and some of them don't. None of mine, for example, do. Some of Colonel Rosenfeld's do, because he is in charge of the section of complaints, information and survey. His do show that.

Q. Do you recall approximately how many witnesses, we will say, that Norman Simpson interviewed during that period of time?

A. I do not. I could not give you that information.

223 Q. I believe you testified you subpoenaed 40 witnesses to come to this hearing?

A. That is correct. Let me break that down to be a little more specific:

Thirty-four of those witnesses were ones that would fall in the category of those who submitted complaints to the Commission. Six were private individuals in the state who had not submitted such complaints.

Q. Your records do disclose the names and addresses of those 40 witnesses?

A. Yes, they do.

Q. Your accounting records, we are talking about?

A. I can't tell you they have all of them down there. They might have the ones they interviewed and decided they didn't present a bona fide case. They might have some of the ones we have subpoenaed. I couldn't tell you precisely.

Q. Can you tell us how many of those interviewed by these various investigators, as corresponds to the number that you subpoenaed, were not going to be used in this Commission hearing?

A. I must tell you that it is beyond my competency.

I have been mostly responsible for the legal preparation.

I do know there were more people interviewed than we subpoenaed.

224 I should also say the limitations on the subpoenas were in the interest of time because we were only permitted to have use of the Courtroom for one day.

The COURT. For the record, let this be said: the Court arranged to lend the use of this Courtroom to the Commission for July 13, intending to place no restrictions upon the Commission as to the length of the hearing.

When we first learned of the date of the hearing, we contacted Dean Storey and explained to him we had an important case fixed for trial tomorrow, July 14, that had been fixed for two or three months and involved multiple millions of dollars and with about fifteen attorneys involved. For that reason, the Courtroom could not be available from the 14th through the balance of the week, but any other time, it would have been completely available.

The WITNESS. I didn't mean to draw any derogatory implications by saying that.

I meant to indicate we had a limitation which I thought should be stated.

By Mr. LASSITER:

Q. Mr. Bernhard, in that connection, you testified you subpoenaed 40 witnesses through the Commission's own efforts and 24 through the marshal's office. That is a total of 64.

A. No, I don't think I said that. I said we sub-
225 poenaed 17 through the United States Marshal's office.

The COURT. Probably, the 17 registrars, plus the plaintiffs.

The WITNESS. I think that is correct.

I am not an expert regarding the handling of subpoenas, and I don't hold myself out as such.

By Mr. LASSITER:

Q. I understand. That is about 60 witnesses, in addition to the records you subpoenaed from the registrars' offices.

Do you believe that the Commission conscientiously expected to hold this hearing for one day only?

A. That would be hard to say. Let me tell you this: I have not put this in the expenditure list. It didn't occur to me at the time.

There are, down here at the present time, six members of the Legal Staff who were coming down for a number of purposes, but one of the specific purposes was to be available if

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we needed help on the records, which we were anticipating would be brought in at 9 o'clock in the morning.

The COURT. As a matter of fact, weren't you anticipating, and didn't you advise the Court, you fully expected the registrars to refuse to bring in the records subpoenaed by the Commission and, therefore, under the Statute, you would
226 have to apply to the Court for an enforcement order?

The WITNESS. I don't know if I made that response. We could not afford to take the chance of having the records come in and not having the personnel available.

The COURT. You couldn't expect the registrars, under the State law, to subject themselves to criminal penalties by bringing those in on the subpoena of the Commission, rather than an order of the Court?

The WITNESS. I think that is perfectly fair. Let me say this——

The COURT. I don't mean to interrupt you. What I am getting at is this: if the Commission felt it was absolutely necessary to their investigation to see these registrars' records, necessarily, they must have anticipated getting those records—not, today, July 13, but upon an order of the Court to be obtained at some later date after the registrars refused to produce them, which would mean that either there would have to be another hearing, or that the records would have to be made open to investigators to photograph copies, as Judge Johnson did in the Wallace case.

The WITNESS. What I anticipated and discussed with Mr. Clark, we thought there was a possibility of reaching an agreement where, if necessary, we could look at the records wherever they were located, and we felt it was necessary to be prepared for that contingency.

227 By Mr. LASSITER:

Q. Do I understand your testimony correctly, Mr. Bernhard, that you have brought in here six men, who are not members of the Commission, with the anticipation of those men examining the records of the registrars of voters?

A. No, they are members of the Commission. They are legal assistants to the Commissioners.

Q. They are Staff Members, but not members of the Commission appointed by the President of the United States?

A. Perfectly true.

Q. Do you have available the records of the names and addresses of the witnesses which each of these investigators talked to and obtained affidavits?

A. I don't have a list of them with me; no.

Q. You are a representative of the Commission. Does the Commission have?

A. I presume that someone does have the record of who we saw. I don't know that it is down in any list of who we saw.

The COURT. Mr. Lassiter, I understand what you are driving at, and I can't blame you for trying, but I don't believe that line of questioning is germane of costs.

Mr. LASSITER. It may be in this respect—let me ask one more question.

228 By Mr. LASSITER:

Q. You have stated that you subpoenaed 40 witnesses through the Commission, and more than that number were questioned by these investigators and were not subpoenaed?

A. That is a fair statement.

Q. Can you tell the Court definitely, with respect to that 40, how many others were—what is the number?

A. The total number?

Q. Yes. Was it 100, 200?

A. If I said it, I would be guessing. I really don't know.

The COURT. Can you give us a fair estimate?

The WITNESS. I couldn't give you a fair one.

By Mr. LASSITER:

Q. Do you have any objection to furnishing this Court with the correct number, or a list of addresses of all these witnesses?

A. No; I wouldn't.

Mr. WILSON. May it please the Court, we would like to object to that last question.

The COURT. I am going to cut this part of Mr. Lassiter's cross-examination short, with this observation: this Court would not take into account, if it fixes a bond, any investigative expenses. We do not believe that properly could be considered.

229 Your objection is sustained.

By Mr. LASSITER:

Q. Mr. Bernhard, assuming that for some reason unknown that this Commission had come here and this suit had not been

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tried and the Commission decided not to hold the hearing, who would have had to pay the expenses?

The COURT. That is self-evident.

Mr. LASSITER. Thank you.

The COURT. Mr. Shaw, do you care to cross-examine?

Mr. SHAW. Yes, sir.

Cross-examination by Mr. SHAW:

Q. Mr. Bernhard, I believe you stated you anticipated that you might have the subpoenas—the subpoenas might not be honored and you might have to obtain an order from the Court to require the attendance and so forth, of witnesses; is that correct?

A. You are using the word "anticipate". We considered that possibility. We didn't conclude that it wouldn't necessarily happen.

Q. You had even spoken to the Court about the possibility of it happening?

A. When we were stating our legal position, we said
230 we recognized what the problem was.

The COURT. Let me remind you of the occasion that I referred to in my question a minute ago.

You and Mr. Mottolese had been working in the library, and I told you what I anticipated the attack to be upon the Commissions' action.

I also said, "Do you expect the registrars to produce their records without an order of the Court?" And, I believe, both you and Mr. Mottolese said, "Of course not." Or words to that effect.

The WITNESS. I am quite sure I would not have said "of course not."

I think I said, "I think it might happen."

By Mr. SHAW:

Q. Regardless of the technical words, what would the Commission have done, had that situation arisen?

As I understand it, you arranged for a one day hearing. You couldn't have had it under those circumstances?

A. We would have gone ahead the same way we did in Alabama and put on our witnesses and asked the registrars to testify with the absence of their records, and if the Commission

decided it was contempt of their hearing, to turn the case over to the Attorney General to get a court order.

We would have gone ahead the same way we did in
231 Alabama.

Q. As I understood it, you were anticipating the possibility that, not only the records might not be here, but the registrars themselves would not be here?

A. No; that is not true.

Q. You hadn't considered that as a possibility?

A. We didn't feel we could determine whether they would or wouldn't.

We figured, since it was a Federal subpoena, we anticipated they might testify but they might or might not bring their records.

Q. That would have occasioned a delay in your hearing?

A. Not in putting on all the witnesses who responded to the subpoenas.

The COURT. What he means, it might or might not have occasioned a delay, depending on the Commissions' decision with respect to the records.

By Mr. SHAW:

Q. You are asking for the total expense of everything incurred in this hearing.

Would that have meant not only in case this hearing were not held, or merely a delay for another day?

A. It would have meant we would have gone on with everybody that was here.

Q. Let us say, if no one showed up?

232 A. If no one showed up, I presume we would not have a hearing.

Q. You would have gone in Court and turned it over to the United States Attorney to get an order to force it?

A. It would have been a determination by the Commission whether they felt it was advisable to do it.

If it was necessary, they would have notified the Attorney General.

Q. This hearing has been postponed, as a result of this action, to say the least.

Does that mean the hearing is over with permanently, or are you in a position to hold a hearing at a later date?

A. I can't speak for the Commission, Mr. Shaw.

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Q. If you are speaking for the Commission, and asking for these damages, whether or not they hold a hearing at a later date is material as to how much the damage is going to be?

A. We have already undergone the out-of-pocket expenses and they would have to be repeated if we held another hearing.

Q. You are just asking for out-of-pocket expenses for their being present today?

A. No. We are asking for the directly related expenses of the Commission in preparing for this particular hearing, and we have limited those expenses to those which we believe
233 would have to be undergone a second time when we hold a hearing.

Q. You mean to say, these expenses of interviewing the people would have to be undergone again at a second hearing?

A. As you know, Mr. Shaw, you may have an individual as a witness one day, and may not have him the next day, and the situations change. The voting situation changes.

The COURT. You mean he might change his story?

The WITNESS. No, I don't mean he might change his story, but he might fear, as this Court may know—some of these people told us, and I am relating it to a certain extent, that they have certain fears, whether they are economic, imaginary, or physical, and some of them may change their minds before the time of their testimony.

We have to consider those things before we subpoena people. As a result, we feel if there is another hearing, we would have to again go to the various parishes to determine whether or not those parishes present problems which should be brought to the hearing, or whatever the situation is.

By Mr. SHAW:

Q. Actually, the truth of this matter is that the effect of this order is nothing more than a continuance, if your
234 claim is correct?

A. It might be a continuance, but we would have to go through these same expenses a second time, if we have another hearing. We have the people available, and we have gone through the expenses, and we would have to do the same thing again.

Q. You may or may not do it; isn't that right? That is your opinion?

A. I could not tell you what might be done. We have been frustrated and thwarted in our effort to carry out a Congressional mandate.

Q. As a matter of fact, you are empowered to make studies, are you not?

A. That is perfectly true.

Q. And these expenses for your work down here, you have been doing a good deal of studying in connection with that?

A. Yes, and some of the studying we have done has been completely deleted from this, because we did not believe it would be an expense that would have to be done again, because it was not related to this hearing.

Q. How much of this money, which has been spent, was paid out directly by the six named individuals in these suits—paid out of their pocket?

The COURT. You mean un-reimbursed?

235 By Mr. SHAW:

Q. Either un-reimbursed, or expenses for which they will not be reimbursed?

A. All of the expenses, I presume, will come out of the Commission's budget, and I am quite sure some of the members of the Commission have not received any of their back payment owed to them by the Government, but they are not going to stand the expenses themselves.

The COURT. Let me ask you this legal question, Mr. Bernhard: if the Court were to order a bond posted, in whose favor would that bond run? Would it run in favor of the Commission, which itself is accountable to the Treasury, or would it run in favor of the individual members who are not directly accountable to the Treasury, but only the Commission?

The WITNESS. I was asked to ask for the indemnification of the Commission itself.

The COURT. Do you consider the Commission is a party to this proceeding?

The WITNESS. Yes.

By Mr. SHAW:

Q. You realize they are not a named defendant?

A. I understand that.

Q. Will you, or any other individual, as far as you know, either in his capacity as a member of this Commission,

236 expect any of these witnesses to refund any of this

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money they have been paid for expenses in connection with this hearing?

The COURT. You mean those that didn't come today?

Mr. SHAW. Yes.

The WITNESS. Those that did not come, we feel we should recover some of that money.

The COURT. Some, or all?

The WITNESS. All. The government is responsible for accounting for all of it.

By Mr. SHAW:

Q. Have you figured out what that is?

A. No, we have not been able to determine how many were here. Some arrived yesterday. Some arrived today. There are a number of registrars here. I don't know how much we will recover on that.

Q. Any witness who made the trip is entitled to his mileage. What about his per diem?

A. I don't think at this time, I could state exactly what would be done with the per diem. The Statute has a specific provision on it, to the effect that those who attended the hearing—and this may raise some question—we will have to consider whether or not there has been compliance with that statutory provision.

237 The COURT. What is the total annual budget of the Commission?

The WITNESS. I don't know. You better try Carol Arth on that.

By Mr. SHAW:

Q. Actually, none of the money that you have spoken of came out of the pockets of any of these named defendants; isn't that right?

A. I would say that was correct.

Q. None of it will come out of their pocket, regardless of the outcome of this particular hearing?

A. I would presume so, but there is a question as to whether in taking any action whatsoever may have been carrying out, or failing to carry out, their official responsibilities, and that is what concerned them about seeing to it that they were protecting their budget.

Q. I don't quite understand you?

A. To the extent that any commissioner fails to carry out certain of his responsibilities, he could be held liable, and one of the problems that concerns them is whether or not they could be held liable in failing to see to it that the budget of the Commission is protected.

Mr. SHAW. Thank you.

Mr. GREMILLION. Your Honor, I would like to ask a couple of questions.

238 The COURT. Very well.

Cross-examination by Mr. GREMILLION:

Q. Isn't it a fact the Attorney General of the United States instructed you to protect the expenses allegedly to be made by this Commission prior to your departure from Washington?

The COURT. I don't understand your question.

Mr. GREMILLION. My information is that the Attorney General of the United States is the person that told him to file this particular motion for a bond for alleged damages or losses, and not the Commission.

The COURT. Mr. Bernhard informed the Court on the telephone definitely that it was Dean Storey who raised that question.

The WITNESS. That is correct.

By Mr. GREMILLION:

Q. Did you have any conversation with the Attorney General of the United States about this motion?

A. I did not.

Q. Do you know of anybody else who had such a conversation?

A. I know of no one, and I can assure you, to the best of my knowledge, it was not done.

239 Q. Did Dean Storey instruct you to make this motion?

A. Yes, he did.

Q. Did the Commission instruct you to make this motion?

A. Yes; unanimously.

Q. When, unanimously?

A. Yesterday. Subsequent to the issuance of the restraining order.

Q. Where did those instruction take place?

A. I received those instructions on the telephone after communicating with Dean Storey.

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Q. Where was the Commission at that time?

A. I couldn't tell you.

Q. Dean Storey told you the Commission had instructed you; is that correct?

A. That is the best of my recollection.

Let me say this——

Q. Wait a minute.

In other words, the Commission had a meeting yesterday?

A. I cannot testify as to what the Commission did.

Q. You are an attorney, and you know if the Commission gave you instructions, they had to get together to give you such instructions?

A. They may, or may not have, Mr. Attorney General.

240 Q. I think the answer speaks for itself.

A. Dean Storey was designated, unanimously, by our Commission as the legal officer for this hearing.

I spoke with Dean Storey and I was informed this was the desire of the Commission—that last night it was determined at a full Commission meeting.

I cannot tell you who was there during the course of the afternoon. I got my instructions from Dean Storey.

Q. Let me ask you this: You did not have those instructions prior to last night?

A. Not the official instructions about what to do, although it had been discussed.

Q. You had your official instructions last night?

A. That's right.

Mr. GREMILLION. Thank you.

Re-cross examination by Mr. SHAW:

Q. You say Dean Storey was designated as legal officer for this particular hearing?

A. That's right.

Q. And he has been giving you instructions as to what to do in connection with this particular meeting we are concerned with?

A. That is correct. As of last night and this morning

241 when the full Commission was meeting, it was further discussed.

Q. In connection with the activities of Dean Storey, has he carried out his duties to the best of his ability?

A. He certainly has.

Q. Has the commission been derelict in any sense in protecting the budget of the Commission?

Mr. WILSON. We object to that.

Mr. SHAW. The Witness mentioned the possible liability of the Commissioners for being derelict in protecting the budget of this Commission.

If he knows of any such dereliction, I would like to know it.

Mr. WILSON. He is asking for a conclusion from the witness.

The WITNESS. I would like to answer this question in terms as to whether he carried out his legal responsibility pertaining to this hearing, and I have given you a direct answer. I hope I have given you a direct answer.

By Mr. SHAW:

Q. Has Dean Storey, or any member of the Commission, acted in such a way which might be construed as a failure to protect the monetary interests of the Commission?

A. I can't answer that.

Q. I said, "as far as you know"?

242 A. To the extent he is attempting to protect the Commission by getting a bond, it is my opinion, he is doing what is absolutely necessary.

Q. And the rest of the Commission, also?

A. I presume if he is doing it, the rest of the Commission is doing it by that means to attempt to protect the budget of this Commission.

Q. From the information you are giving this Court, there is no responsibility possible of any liability on their part as a result of failure to protect the monetary interests of this Commission; isn't that a correct statement?

A. I can't answer that. That is a conclusion this Court, or another Court, would have to make.

Q. To put it another way, you don't know of any act which would, in any way, cause them to incur any responsibility on their part?

A. If they do not protect the budget of the Committee, it could be construed to be such.

Q. You said you have acted to protect it?

A. That is the intention of my being here.

Q. The answer to that is they have not failed, in any action, to protect the monetary interests of the Commission.

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A. I would hope so, but I couldn't give you any assurance.

Mr. SHAW. That's all.

243 I would like to ask the Court to note that all the questions on cross-examination are subject to the objections previously made.

The COURT. All right.

Statement by Mr. Gremillion

Mr. Gremillion.

Mr. GREMILLION. I would like the Court to bear a few things in mind: I call the Court's attention to the pleadings and the fact that the Commission, several months prior to the Staff Members coming to Shreveport, they were advised of the Louisiana law and they were advised of the positions the registrars would take and namely, we wanted to know the names of our accusers and the nature of the complaints, and this State would cooperate.

We have done that on enumerable occasions. In addition to that, the Commission, by the passage of this resolution, pursuant to our request, refused to give this information. When the questionnaires were sent out, we wrote them a letter and advised them of the constitutional rights of these registrars. That letter contained complete reference to all the constitutional objections we made.

Despite that information, this Commission made administrative decisions, such as the one in Chicago, in June, when it decided to hold a hearing here. We were never officially notified of anything. All my office received was a letter saying that the Commission desired to hold a hearing

244 on July 13.

I point that out to the Court, that all these administrative decisions were made contrary and after being advised of the constitutional rights that these registrars would take.

So, therefore, these complainants should not be made to put up a bond to cover the results of expenses for the administrative decisions of the members of the Civil Rights' Commission, because if they had given us the names of the complainants and the nature of the complaints, there never would have been any necessity for a hearing in this case, and that, I think, is important, because they are seeking a bond to cover a possibility of a re-imbursement which was caused solely and

entirely by the administrative actions of the Commission, over which these complainants certainly have no control.

I call the Court's further attention to this: that the Commission is created primarily—solely for the purpose of finding fact concerning the discrimination of voters with reference to race, creed or color.

Their only authority is to file a report with Congress. Therefore, any of the results of investigators for this Commission which were made in Louisiana, can be filed in that report to Congress and can be fully utilized.

245 Also, where would there be any damage to the members of the Commission? Where would there be any loss? They still have the information.

Under their rules, if Your Honor will recall, and this is one of the things we raised in our pleadings under Section 8, I believe, that they are the sole judges of the facts pertaining to any testimony or evidence. Therefore, all of the investigations they have made, they can look at it, as a group, and say, "this isn't worth putting in the report to Congress", or they can assemble it regarding the Louisiana situation and make such a report to Congress.

Where would be the loss of the funds to the Commission?

I further call your attention to the fact that Dean Storey and Mr. Tiffany both said this was not an adversary proceeding. They said it was a fact-finding body.

The COURT. The Supreme Court of the United States said, in that connection, that it makes no difference if a person's character or reputation is going to be destroyed by refusal to permit cross-examination.

By Mr. GREMILLION:

I wanted to bring out and to show Your Honor in this instance that there is no necessity for a bond on the part of

246 these complainants, because the entire matter was provoked by administrative decisions of the Commission, and they can still use all evidence and testimony they received when they file their report to Congress.

The COURT. Do you want to be heard?

Statement by Mr. Bernhard

Mr. BERNHARD. Yes, sir.

What the Attorney General is now saying is while there is

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something wrong with having a full and open hearing and to say who the complainants are and the registrars are, that is not good, but it is perfectly satisfactory for us to make recommendations to Congress based upon reports and investigations. We have not seen the records and have not discussed them with the registrars in an informal way.

The COURT. Do your investigators, in interviewing people, require any complaints filed with the Commission be under oath?

Mr. BERNHARD. The complaints, themselves, are required to be notarized when we receive them.

The COURT. They are in affidavit form?

Mr. BERNHARD. They are in affidavit form.

In view of the statements of the Attorney General now, it seems to me we have every right to go ahead with our Congressional responsibility to investigate fully the situation, and after such examination, determine whether the facts
247 were substantial enough to be used for our report.

The COURT. This Court does not dispute that you have that right. We do dispute the question of denying the right to cross-examine.

It is the Court's view that you cannot have a fair hearing without permitting the witnesses' statements to be tested in the fairness of cross-examination.

Mr. BERNHARD. As the Court knows, it was not until yesterday evening that the Commission found out, and it was never anticipated that could be a result happening up until the day before.

We still feel we have every constitutional right to go ahead with the mandate we received from Congress.

The Attorney General's argument does not relate to the true acts. It was only last night that it was determined there was something wrong, in the mind of this Court, in going ahead with this hearing.

Certainly, up to the time of this hearing, we have done everything lawful and have gone ahead properly, and that is why the expenses were incurred, and I feel we should be indemnified.

Mr. SHAW. May I be heard, Your Honor?

The COURT. Yes.

Statement by Mr. Shaw

248 Mr. SHAW. We are concerned with the question of bond.

At the hearing Friday, and again today, Mr. Bernhard, Dean Storey, and the other people who appeared, made the claim they were not here representing the Commission. They reserved their rights. I tried specifically to get Dean Storey to state his capacity and he did specifically refuse to state whether or not he was representing the Commission.

Now, I understand, they want the Court to protect the Commission, but they don't represent the Commission, by their own statement, and by the statement Mr. Bernhard made, that he was here subject to the statements made last Friday.

A bond given in this case will not run to the United States. It will run to John Hanna and the other named individuals.

The COURT. That is a point I would like to hear from Mr. Bernhard on further.

I can't get it in my head where the plaintiffs are as they are, and the defendants are individually, and as members of the Commission—but the Commission itself is not a party to the proceedings—how the Court could require a bond in favor of the Commission which is not here.

249 Mr. BERNHARD. The individuals were named in their private capacity and their official capacity, and being named in their official capacity, since the Commission must have certain heads, the Commission itself is involved in this proceeding.

Who else could there have been that the Attorney General and Mr. Shaw could have sought an injunction against if it were not the individual members who were the heads of the Commission? They are the individuals through which the Commission acts.

The service would have to attach to someone, and those were the individuals they decided to name.

Mr. SHAW. We tried that argument in the Eastern District, in the Orleans Parish School Board case.

If it was a suit against State, the eleventh amendment would have protected us. If this was a suit against the United States, or against a Commission, there were certain rules and regulations which we did not follow, which would have stopped us if we did.

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This is a suit against those individuals, and any damages covered by such a bond would only be to cover damages to those individuals in their individual capacities as members of the Commission.

The Commission itself is not before the Court. The
250 bond won't run in its favor. The United States is not before this Court, and that is the real person who is going to lose the money.

According to the citation by the United States Attorney, they won't be able to recover no matter how much you make the bond for, because the bond is not in their favor.

So, it would occur to me that the only people who have anything before this Court would be these six named individuals, and the testimony on the amount of the bond should be how much damage can be done these individuals.

Mr. BERNHARD. This Commission operates under appropriation of Congress and the appropriation is limited, and the Commission will suffer.

Mr. CASHIO. If the Court please, may I make a brief remark in supplementation of the arguments already made:

The rule applicable to security in a case of this kind covers two things. First, costs, and the other damages.

Obviously, the costs referred to in Rule 65(c) are Court costs, which are taxable.

Here, again, obviously the United States——

The COURT. I go along with you there, and maybe I can cut you short: any agency of the United States
251 would not be liable for court costs, and the plaintiffs must advance all costs until they get a decision in their favor on the merits.

Mr. CASHIO. On the question of damages, Rule 65(C) says that the amount of bond fixed by the court in its discretion shall be for the payment of such damages which may be incurred, or suffered by any party who is found to be wrongfully enjoined or restrained.

To supplement what counsel already said, the parties to this action are only the individual members of the Commission and not the Commission itself.

I have not assumed that the Commission were a party to this action. The damages which are contemplated to be covered by this bond would be such damages as could be recovered in a suit at law.

How can the Commission—assuming the Commission is a party to this action—how could the Commission recover a judgment for such damages as it might incur?

It has no authority to be sued, nor can it sue.

In the establishment of this Commission by an act of Congress, it neither gave it the right to sue or to be sued. If it has not authority to sue, then it cannot recover a judgment for damages.

252 So, the obvious consequence of that is that it can suffer no damages because it could not recover a judgment for such damages.

The COURT. All right, gentlemen. I will read this case Mr. Wilson cited and come back as soon as possible and render my decision.

(Whereupon, at this point, a recess was had.)

The COURT. For the record, the Court had just conferred in Chambers with the Attorneys of record in these cases and has discussed with them the case cited by Mr. Wilson for the Commission, Benz, et al. vs. Compania Naviera Hidalgo, S.A., cited by the 9th Circuit Court of Appeals, June 30, 1953, and reported at 205 F. 2d 944.

In that case, as we read it, a certain steamship had been picketed by certain labor union pickets. An application was made to the district court for an interlocutory injunction against the picketing organization, that it was unlawful and that the court granted the interlocutory injunction.

The defendants appealed, and while the case was on appeal, the picketing was stopped and the ship sailed away and the case became moot.

In its per curiam opinion, beginning on page 947 of 205 Fed. 2d, the court pointed out that a surety bond was

253 mandatory under Section 107, title 29, U.S. Code, the Morris-LaGuardia Act, and went on to state that the rule in Federal courts is that in the absence of such a surety bond there may be no recovery for damages for the issuance of a temporary injunction, even though it may have been granted without just cause, citing several authorities, including two decisions by the United States Supreme Court and one by the Fifth Circuit Court of Appeals.

So, we take it as settled, according to those authorities, such damages are not recoverable.

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Here, however, instead of having a mandatory bond as required by the Morris-LaGuardia Act, we have a discretionary matter presented by Rule 65(c), the discretion feature of it having been announced by the Fifth Circuit Court of Appeals in the Ludley case, reported at 252 Fed. 2d 372.

We also note for the record the agreement by Mr. Bernhard that the Commission and its members do not disagree, and concedes that it is purely a matter addressed to the sound discretion of the Court.

Here we have in suit No. 7479, 17 registrars of voters, who are here in their official capacities. They could not sign a bond for costs in their official capacities, because such action would be ultra vires—beyond their authority to act as registrars.

254 Moreover, any such undertaking would be an attempt to bind the public fists of the State of Louisiana, of which they are part.

In Chambers, several of the attorneys representing the registrars offered to sign bonds themselves if the Court were to require it. Our local rules prohibit attorneys, or members of this bar, from signing any bonds. We, of course, have the power to waive that rule, if we see fit, but under all the circumstances in this case, and considering, additionally, that these expenses—these costs—that are claimed by the Commission in its application for the bond, might be classed as all part of the game.

Order requiring no bond

The expenses that they expect to incur—Congress expected them to incur—plus the other considerations that we have mentioned, we believe that in the exercise of our discretion, that no bond should be required, and it is so ordered.

The application will be denied.

Court is adjourned.

Mr. BERNHARD. May I ask one question?

The COURT. Yes.

Mr. BERNHARD. Did that apply to the second suit, as well?

The COURT. Yes, to both suits.

Mr. BERNHARD. May I be excused from further

255 proceedings in this matter?

The COURT. Yes. I suppose Mr. Brooks and Mr. Owen will participate.

Mr. BERNHARD. That is correct.

The COURT. Court is adjourned.

[Reporter's certificate to foregoing transcript omitted in printing.]

261 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS, ETC.

v.

JOHN A. HANNAH, ET ALS., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Order convening three-judge court

July 13, 1959

[File endorsement omitted.]

The Honorable Ben C. Dawkins, Jr., United States District Judge for the Western District of Louisiana, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, hereby designate the Honorable John M. Wisdom, United States Circuit Judge, and the Honorable Edwin F. Hunter, Jr., United States District Judge for the Western District of Louisiana, to serve with Judge Dawkins as members of, and with him to constitute, the said court to hear and determine the action.

Witness my hand this 13th day of July, 1959.

JOSEPH C. HUTCHISON, Jr.,
Chief Judge, Fifth Circuit.

(Injunctions—Three Judge Courts—Designation, 28 USCA Sec. 2284.)

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263 In United States District Court
Western District of Louisiana
Shreveport Division

SHREVEPORT, LOUISIANA,
July 15th, 1959.

In re Larche v. Hannah, Civil Action No. 7479

Honorable JOHN MINOR WISDOM,
United States Circuit Judge,
Hayden Hall, Apartment 6–B,
New York University,
New York, New York.

Honorable EDWIN F. HUNTER, Jr.,
United States District Judge,
Lake Charles, Louisiana.

GENTLEMEN: I enclose copy of Order dated July 13th, 1959, signed by Honorable Joseph C. Hutcheson, Jr., Chief Judge of this Circuit, convening a three-judge Court to act in the above styled civil action, with particular reference to the constitutionality *vel non* of the Act of Congress creating the Commission on Civil Rights, Public Law 85–315, 71 Stat. 634, 42 U.S.C.A. § 1975 a–e, this Order having been issued after examination of the record, briefs and opinion by Judge Hutcheson, as forwarded to him in our letter of July 12th, copy enclosed.

I already have sent Judge Hunter a copy of my opinion granting a temporary restraining order in this case, and in a related case not involving a three-judge Court, and enclose herewith to Judge Wisdom a copy thereof for his information.

I also will have our Clerk make, and send to each of you, photo copies of the complaints in both cases, as well as the briefs which were filed with me in connection with the applications for temporary restraining orders.

In the restraining orders issued by me on July 12th, I provided for a return date on the rules *nisi* of July 22nd, at 9:30 a.m., at Shreveport, Louisiana, this, of course, being in keeping with Rule 65, Fed. Rules Civ. Proc., which provides that a restraining order may not continue in force, unless renewed, beyond ten days from issuance. It is my understanding that Judge Hunter has other pressing commitments through August 1st, as does the writer. We have been unable to contact Judge

Wisdom by telephone in New York, so are advising him
264 of this by letter; and, therefore, we do not know what his schedule may be, except that Judge Hutcheson advised us he would return to New Orleans approximately on July 20th. However, because of the situation of Judge Hunter and myself, and also because I am sure all of us will want to thoroughly study the matters, on briefs to be filed by respective counsel, prior to hearing arguments on the constitutional questions presented, Judge Hunter and I have agreed, subject to Judge Wisdom's approval, that I will renew and continue the restraining orders in effect, so that the *status quo* may be maintained until a hearing can be held at Shreveport, at 9:30 a.m. on Friday, August 7th.

Meantime, I have instructed the attorneys involved, through conversations with Honorable T. Fitzhugh Wilson, United States Attorney for this District, and Honorable Jack P. F. Gremillion, Attorney General of Louisiana, that both sides are to file full briefs on the constitutional questions by July 31st, 1959. By copies of this letter to the last named gentlemen, I also am asking for full briefs from both sides respecting the application for an interlocutory injunction in Civil Action No. 7480, likewise to be filed by July 31st.

With best personal regards to each of you, I am,

Sincerely yours,

BEN C. DAWKINS, Jr.,
U.S. District Judge.

BCDjr:mf
Enclosures.

Copies to Honorable T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, Baton Rouge, Louisiana.

P.S.—We request that Messrs. Wilson and Gremillion notify all other counsel allied with them of the contents of this letter.

B. C. D., Jr.

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265 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To Rev. Theodore S. Hesburgh, Ind. & as a member of the Commission on Civil Rights, et al. Greeting:

By virture of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order duly certified under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, Rev. Theodore S. Hesburgh, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or holding any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La. until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three Judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of

Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.
By THOMAS W. THOMPSON,
Chief Deputy Clerk.

265a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET . . . . , DATE . . . .

Received Shreveport, La., July 13, 1959 Executed Barksdale Air Force Base, La. by delivering certified copy of this writ, together with certified copy of Bill of Complaint and Order to the within named Rev. Theodore S. Hesburgh individually and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

Fee: $2.00.

DONALD C. MOSELEY,
U.S. Marshal.
By JAMES L. JORDAN,
Deputy.

[File endorsement omitted.]

266 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To Doyle E. Carlton, Ind. & as a member of the Commission on Civil Rights, Greeting:

By virtue of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order, duly certified

COPY BOUND CLOSE IN CENTER

under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, Doyle E. Carlton, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or holding any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La. until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three Judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July, 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July, 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.

By THOMAS W. THOMPSON,
Chief Deputy Clerk.

266a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET . . . ., DATE . . . .

Received Shreveport, La., July 13, 1959. Executed Barksdale Air Force Base, La., by delivering certified copy of this Writ, together with certified copy of Bill of Complaint and Order to within-named Doyle E. Carlton individually and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

Fee: $2.00.

DONALD C. MOSELEY,
U.S. Marshal.

By JAMES L. JORDAN,
Deputy.

[File endorsement omitted.]

267 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To John A. Hannah, Individually and as a member of the Commission on Civil Rights, Greeting:

By virtue of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order duly certified under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, John A. Hannah, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or hodling any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La., until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full court of three judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

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You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July, 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July, 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.

By THOMAS W. THOMPSON,
Chief Deputy Clerk.

267a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET ——, DATE ——

Received Shreveport, La., July 13, 1959. Executed Barksdale Air Force Base, La., by delivering certified copy of this Writ, together with certified copy of Bill of Complaint and Order to within-named John A. Hannah individually, and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

DONALD C. MOSELEY,
U.S. Marshal.

By James L. Jordan,
JAMES L. JORDAN,
Deputy.

Mileage, $1.20; fee, $2.00; $3.20.

[File endorsement omitted.]

268 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Motion for Continuing in Effect Temporary Restraining Order and for Continuance of Rule Nisi for Preliminary Injunction

July 22, 1959

[File endorsement omitted.]

To the Honorable, the Judges of the United States District Court, for the Western District of Louisiana, Shreveport Division:

On motion of Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners herein respectively, Registrars of Voters for the respective parishes hereinbefore named; and,

On suggesting to the Court that temporary restraining order was issued herein on July 12, 1959, at or about 5:30 P.M. against the defendants herein, which restraining order will expire on July 22, 1959, at 9:30 A.M.; and,

On further suggesting to the Court that the rule nisi issued herein is set for hearing at 9:30 A.M., August 7, 1959; and,

On further suggesting to the Court that your movants and defendants' counsel have been informed that due to the condition of the docket in this Honorable Court and previous commitments made prior to the issuance of the above mentioned orders that it will be impossible for the said rule to be heard at the time and place previously fixed, namely, July 22, 1959:

It is ordered by the Court, that the temporary restraining order heretofore issued be continued in full force and effect from July 22, 1959, until 9:30 A.M., August 1st, 1959, or until the rule for a preliminary injunction be heard, and that the

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hearing on the rule nisi be likewise continued from July 22, 1959, until 9:30 A.M., August 7, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

Issued at Shreveport, Louisiana, at 9:30 o'clock, on this, the 22nd day of July, 1959.

Certified copy hereof received at S'port, La., 7–22–59, of Clerk, U.S. District Court, above mentioned documents. J. K., Deputy U.S. Marshal.

269 Above motion prepared and respectfully submitted by Jack P. F. Gremillion, Attorney General of State of Louisiana and Attorney for Petitioners.

JACK P. F. GREMILLION,
Attorney General of Louisiana.
By FERDINAND A. CASHIO,
Special Assistant Attorney General.

[Certificate of service omitted in printing.]

270 [Return on service of writ omitted in printing.]

275 In United States District Court, Western District of Louisiana

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, July 28, 1959.

Jack P. F. Gremillion, Attorney General.

In re: Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

CLERK,
U.S. District Court,
Western District of Louisiana,
Shreveport, Louisiana.

[File endorsement omitted.]

DEAR SIR: Please find enclosed copy of letter and proposed stipulations transmitted to counsel for defendants in the above captioned cause.

Please file same under record.

Yours very truly,

John E. Jackson, Jr.,
JOHN E. JACKSON, Jr.,
Special Counsel to the Attorney General.

JEJ:ec.
Enclosures.

276

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, July 30, 1959.

Jack P. F. Gremillon, Attorney General.

In re: Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

Honorable T. FITZHUGH WILSON,
United States Attorney,
Post Office Building,
Shreveport, La.

DEAR MR. WILSON: Attached you will find an original and three copies of proposed stipulations of fact which are submitted to you in an effort to facilitate and expedite the court's work on August 7.

Complainants deem that these stipulations are fair and reflect the facts and record and express uncontested admissions from both sides. It was therefore concluded that it would not be necessary to proceed pursuant to Rule 36 of the Federal Rules of Civil Procedure; however our request to you for your approval of the attached set of stipulations is based and founded upon the spirit and purpose of Rule 36.

It would be greatly appreciated should you honor this request if you will sign the original and two copies of the stipulations and file same with the court.

Very truly yours,

JACK P. F. GREMILLION,
Attorney General.

By M.E.C.

JPFG:ec.
Enclosures (4).

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277 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 7479

Filed: August —, 1959. ——— ———, *Deputy Clerk.*

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA, COMPLAINANTS

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS, DEFENDANTS

STIPULATION IN AND BETWEEN COMPLAINANTS AND DEFENDANTS

Filed July 29, 1959

1

Complainants, Mrs. Margaret M. Larche, Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Sidney W. Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry Earl Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell, are citizens of the United States and the State of Louisiana, taxpayers, qualified voters, and Registrars of Voters in and for their respective parishes of the State of Louisi-

2

Defendants: John A. Hannah, a resident of East Lansing, Michigan; Robert C. Storey, a resident of Dallas, Texas; John S. Battle, a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, a resident of South Bend, Indiana; Doyle E. Carlton, a resident of Tampa, Florida; and George M. Johnson, a resident of the State of California, presently residing in Washington, D.C., are citizens of the United States and, as well, members of the Commission on Civil Rights.

3

278 The Attorney General of Louisiana, Honorable Jack P. F. Gremillion, is legal counsel designated by the legislature for all Registrars of Voters of the State of Louisiana, and the other counsel of record are attorneys for the complainants respectively in their individual capacities.

4

Persons and counsel heretofore representing the Commission, as well as the Attorney General of the United States and members of his staff and the United States Attorney for the Western District of Louisiana, Honorable T. Fitzhugh Wilson, represent defendants.

5

Honorable Gordon M. Tiffany is the duly appointed Staff Director for the Commission on Civil Rights and has acted by virtue of such authority with all of the complainants herein as well as with their counsel and under the express authority of the Civil Rights Commission.

6

All of your complainants or their legal counsel since the early part of the year, 1959, have been in contact with duly accredited representatives of the Civil Rights Commission relative to certain alleged complaints registered with the Commission by sworn affidavits as to interference with their rights to vote through alleged deprivation thereof on account of the alleged accusers' race, color, religion or national origin.

7

The Commission, through its duly authorized Staff Director at conferences with Attorney General, Jack P. F. Gre-
279 million, relative to such alleged complaints, the import of which was to the effect that the Commission would hold a hearing relative thereto or in order to possibly obviate the necessity of such a hearing, the Commission would prepare and submit to the Registrars questionnaires relative to such complaints. There is a conflict as to whether these questionnaires were to be submitted only after giving the names of the accusers and the nature of their accusations. Prior thereto

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attorney, W. M. Shaw, on behalf of his client addressed a letter to the Commission dated March 14, 1959, which was replied to by the Commission under date of April 14, 1959, signed by Director, Tiffany, reading as follows:

"The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

"Having considered the same, the request was denied by the following statement adopted by the Commission:

" 'The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints.' "

A copy of the resolution referred to in the same letter is attached to complainants' petition.

8

Thereafter, director Tiffany furnished to each of the Registrars and to Attorney General, Jack P. F. Gremillion a questionnaire (copy attached). After conferences with the Registrars of Voters, Attorney General Gremillion addressed a letter to Director Tiffany dated May 28, 1959 (copy attached) to which Director Tiffany replied on May 29, 1959 by telegram (copy attached), which was replied to by Attorney General Gremillion on June 2, 1959 (copy attached). There was no
280 further communication between Attorney General Gremillion or the complainants herein with the Commission until the complainants received a subpoena, copy of which is attached to the petition filed herein.

9

A hearing on the petition filed herein was held at Shreveport, Louisiana, on July 10, 1959, before Honorable Ben C. Dawkins, Jr., Chief Judge, and, thereafter, upon oral motion by defendants for the complainants to post bond a hearing was held before Judge Dawkins on July 13, 1959.

10

It is admitted that the Commission has in its possession sixty-seven (67) sworn written complaints which allege that complainants have deprived certain citizens of the United States of their right to vote or to have their vote counted because of their color, race, religion or national origin and that the Commission has refused to divulge the names of the authors of such complaints or the contents of the complaints to your complainants.

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Attorney for Complainants.
By M. E. CULLIGAN,
Assistant Attorney General.

Shreveport, Louisiana, this —— day of August, 1959.

282 In the United States District Court for the Western District of Louisiana Shreveport Division

[File endorsement omitted.]

[Title omitted.]

Motion to continue in effect restraining order

Filed July 31, 1959

To the Honorable, the Judges of the United States District Court, for the Western District of Louisiana:

On motion of Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners herein respectively, Registrars of Voters for the respective parishes hereinbefore named; and,

On suggesting to the Court that a temporary restraining order was issued herein on July 12, 1959, at or about 5:30 P.M. against the defendants herein, which by order of this Court signed and issued at Shreveport, Louisiana, at 9:30 A.M., on July 22, 1959, was extended to and continued in full force and effect from that date until 9:30 A.M., on August 1st, 1959; and,

On further suggesting to the Court that because of the condition of the docket of this Court, and previous commitments

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made, in the same order signed and issued on July 22, 1959, as aforesaid, the hearing of the rule nisi for a preliminary injunction was continued from July 22, 1959 to August 7th, 1959, at 9:30 A.M.; and,

On further suggesting to the Court that the restraining order herein will expire at 9:30 A.M., on August 1st, 1959; and,

On further suggesting to the Court that because of the time and date as now fixed for the trial of the said rule nisi for preliminary injunction, namely: at 9:30 A.M., on August
283 7th, 1959, a recognized necessity exists for the extension and continuance in full force and effect of the temporary restraining order from 9:30 A.M., on August 1st, 1959, to the time and date of said trial of the rule nisi for preliminary injunction at 9:30 A.M., on August 7th, 1959; and,

On further suggestion of counsel herein, the Court takes special cognizance of the need to extend and continue said temporary restraining order, as aforesaid:

It is ordered by the Court, ex proprio motu, that the temporary restraining order heretofore issued herein be continued in full force and effect from 9: 30 A.M., on August 1st, 1959, until 9: 30 A.M., on August 7th, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

Issued at Shreveport, Louisiana, at 9: 30 o'clock A.M., on this the 31st day of July, A.D., 1959.

Certified copy hereof received at S'port, La., 7–31–59 of clerk, U.S. District Court, above mentioned documents. Deputy U.S. Marshal.

Above Motion prepared and respectfully submitted by Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners.

JACK P. F. GREMILLION,
Attorney General of Louisiana,
By Ferdinand A. Cashio,
FERDINAND A. CASHIO,
Special Assistant Attorney General.

[Certificate of service omitted in printing.]

284 In the United States District Court for the Western District of Louisiana, Shreveport Division

[Title omitted.]
[File endorsement omitted.]

ANSWER

Filed July 31, 1959

In response to the rule to show cause issued by this Court, comes now the Attorney General of the United States by W. Wilson White, Assistant Attorney General and T. Fitzhugh Wilson, United States Attorney, as attorneys for the United States Commission on Civil Rights and as attorneys for John A. Hannah, Robert G. Storey, John S. Battle, Theodore S. Hesburgh, Doyle E. Carlton and George M. Johnson, the members of said Commission in their official and individual capacities and answer the complaint herein as follows:

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Injunctive relief is unavailable because there is no legal injury or threat of legal injury to plaintiffs.

285

Third Defense

Injunctive relief is unavailable and premature because plaintiffs have adequate remedies at law.

Fourth Defense

1. Defendants admit the allegations contained in paragraph 1.

2. In answer to paragraphs 2 and 3 defendants admit the content of Exhibits A and B referred to in paragraph 3 and incorporated therein, and admit that the names of persons who have made written allegations to the Commission and the content of such writings have not been revealed to plaintiffs. Defendants deny that the Commission advised plaintiffs' attorney that it would "under no circumstances" divulge the names of such persons. On the contrary many of such persons were subpoenaed to appear and testify at the public hearing scheduled by the Commission which is the subject matter of this action.

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3. With respect to paragraphs 4, 5, 6, 7, 8, and 9, defendants admit those portions of said paragraphs which allege that plaintiffs are citizens of the United States and of the State of Louisiana (par. 5) and registrars of voters in their respective parishes in the State of Louisiana (par. 6), but defendants are not further required to plead to said paragraphs, as the allegations contained therein are conclusions of law, but insofar as an answer may be required defendants deny each and every allegation contained in said paragraphs.

4. Defendants admit the allegations contained in paragraph 10 except the allegation that registrars "thus summoned
286 are deprived of their constitutional right of cross-examination," to which allegation defendants are not required to plead, as it is a conclusion of law, but insofar as an answer may be required it is denied.

5. Paragraphs 11, 12, 13, 15, 16, contain conclusions of law to which defendants are not required to plead, but insofar as an answer may be required each and every allegation in said paragraphs is denied.

6. With respect to paragraph 14, defendants admit that plaintiffs have been advised by the Attorney General of Louisiana as alleged therein, and that neither the Commission nor its agents have revealed the content or the subscribing names of the written allegations received by the Commission. Defendants are not required to plead further with respect to said paragraph, as the allegations are conclusions of law, but insofar as an answer may be required said allegations are denied.

7. Defendants deny that portion of paragraph 17 which alleges that the proposed hearing "is doubtless designed to foster the interest of some alleged applicant or applicants for registration under Louisiana law without affording any Registrar of Voters any opportunity of knowing the facts and circumstances surrounding the complaint". On the contrary said hearing was to be held for the purpose and only the purpose of fulfilling the Commission's statutory obligations under the Civil Rights Act of 1957, Public Law 85–315. Defendants are not required to plead further with respect to paragraph 17, as the matters contained therein are conclusions of law, but insofar as an answer may be required such allegations are denied.

287 8. Defendants deny each and every allegation contained in paragraphs 18, 19, and 20.

Wherefore, it is respectfully requested that this Court discharge the rule to show cause, dismiss the action and enter judgment for the defendants.

W. Wilson White,
W. WILSON WHITE,
Assistant Attorney General.
T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney.

288 In United States District Court, Western District of Louisiana

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, La., July 30, 1959.

U.S. District Court, Western District of Louisiana. Filed August 1, 1959. By Alton L. Curtis, Clerk.

Jack P. F. Gremillion, Attorney General.

In re Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

CLERK, UNITED STATES DISTRICT COURT,
Western District of Louisiana,
Post Office Building,
Shreveport, Louisiana.

DEAR SIR: Please find attached original affidavits in triplicate to be filed in the above captioned cause for and in behalf of complainants.

These affidavits are filed in support of complainants motion for preliminary injunction in the premises which motion is scheduled for hearing on Friday, August 7, 1959.

Defendants have been served with copies of all affidavits through their Attorney of Record by placing same in the United States mail on this first day of August, 1959.

Yours very truly,

John E. Jackson, Jr.,
JOHN E. JACKSON, Jr.,
Special Counsel to the Attorney General.

JEJ/le.
att.

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289 *Affidavit*

Filed August 1, 1959

[File endorsement omitted.]

STATE OF LOUISANA,
Parish of Madison (ss):

Before me, the undersigned authority, personally came and appeared Katherine S. Ward, known to me, who being first duly sworn did depose and say:

That your affiant is the duly appointed, qualified, and acting Registrar of Voters of the Parish of Madison, State of Louisiana, that affiant is one of the complainants in the case entitled Mrs. Margaret M. Larche, et al v. John A. Hannah, et al, Civil Action No. 7479, United States District Court, Western District of Louisiana, Shreveport Division; that your affiant was served with a subpoena issued by Honorable John A. Hannah, Chairman of the Commission on Civil Rights ordering your affiant to appear and testify and as well produce all of the official records of the office of the Registrar of Voters, Parish of Madison at a hearing to be held July 13, 1959, at the United States courtroom, Shreveport, Louisiana, located in the Parish of Caddo; that for the reasons as outlined in the petition and pleadings filed in the said cause, your affiant suffers and will continue to suffer irreparable injury; that affiant is informed that the Commission on Civil Rights has a complaint or complaints against affiant accusing affiant of having deprived certain United States citizens whose names are unknown to your petitioner of their right to vote or to have their vote counted because of their color, race, religion, or national origin; that a questionnaire prepared by the Commission on Civil Rights was received by affiant which has not been answered; that affiant's legal counsel in this matter appointed by law is Attorney General, Jack P. F. Gremillion, whose advice and counsel has been relied upon and followed; that affiant has never been furnished by the Commission on Civil Rights nor by anyone with the names of affiant's accusers or the nature and cause of the accusation made against affiant before the Commission on Civil Rights.

KATHERINE S. WARD.

Sworn to and subscribed before me this 29 day of July, 1959.

[SEAL] GRACE GRIMES.

Clerk's note

Similar affidavits executed by Mrs. Mae Lucky, U. Charles Mitchell, Sidney Wells Platt, Henry Earl Palmer, Thomas W. Thompson, Mrs. L. L. Linton, Johnie L. Kelly, and Margaret M. Larche appearing on pages 290 through 297 inclusive are omitted in printing.

298 [Certificate of Service of affidavits omitted in printing.]

333 In United States District Court for the Western District of Louisiana

Affidavit of Jack P. F. Gremillion

Filed August 1, 1959

[File endorsement omitted.]

STATE OF LOUISIANA,
Parish of Orleans (ss):

Before me, the undersigned authority, a notary public duly qualified and commissioned in and for the Parish of Orleans, State of Louisiana, personally came and appeared Jack P. F. Gremillion, known to me, who being first duly sworn did depose and say:

That he is the duly elected, qualified, and acting Attorney General of the State of Louisiana and by virtue of his office is attorney for the Registrars of Voters of all parishes in the State of Louisiana as provided in Act 482 of 1958, excerpt from which is attached hereto and made part hereof, the same as if copied herein in extenso; that your affiant is a member of the Bar of the State of Louisiana and a member of the Bar of the Supreme Court of the United States; that the Commission on Civil Rights through its duly appointed Director, Honorable Gordon M. Tiffany and other authorized representatives of the said Commission did contact affiant both in person and by means of correspondence, as is more fully explained hereinafter, to-wit:

The fact that your affiant under law is and was the attorney for the registrars of voters was fully conveyed to the Commission on Civil Rights through its Staff Director, Gordon M. Tiffany, as early as January of this year; that affiant had an ex-

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tensive conference with Mr. Gordon M. Tiffany, the Director of the Commission on Civil Rights, on January 22, 1959, and, as a result of this conference, wrote a letter dated January 23, 1959, to all Registrars of Voters in the State of Louisiana and all District Attorneys and Assistant District Attorneys of Louisiana outlining the agreements reached and made in and between affiant, as attorney for the registrars of voters, and the Commission on Civil Rights, all of which is reflected by the letter attached dated January 23, 1959, signed Jack P. F. Gremillion, Attorney General, marked Exhibit "A".

Verbal instructions as well were given to our Assistant Attorneys General and members of my staff for them to give their complete cooperation to the Commission on Civil Rights, its staff members and employees, and to assist them in any manner in the conduct of their investigations and inquiries.

On January 29, 1959, affiant received letter dated January 28, 1959, from Gordon M. Tiffany, Staff Director of the Commission on Civil Rights, in his official capacity acknowledging copy of Act 482 of 1958 and acknowledging and thanking affiant and the officials of the State of Louisiana for their spirit of cooperation, which letter is attached and marked Exhibit "B".

That on March 12, 1959, Commission on Civil Rights held an interview in Minden, Louisiana, with Mrs. Lannie Linton, Registrar of Voters, Claiborne Parish, Louisiana, through Colonel A. H. Rosenfeld, Jr., Chief of the Complaints Division of the Commission, which prompted Mrs. Linton's personal attorney, W. M. Shaw, in the protection of her rights to address a letter dated March 14, 1959, to Honorable Gordon M. Tiffany, Director, Federal Civil Rights Commission, copy attached marked Exhibit "C".

Interviews were held in the same manner by Colonel Rosenfeld with the Registrars of Voters for the Parishes of Caddo and Webster, State of Louisiana, transcripts of which interviews were forwarded by your affiant to Colonel Rosenfeld under cover of letter dated March 23, 1959, copy attached marked Exhibit "D", for which complete cooperation thanks were given by Colonel Rosenfeld, as evidenced by his letter addressed to affiant, dated March 25, 1959, marked Exhibit "E".

334 Reply to Mr. Shaw's letter of March 14, 1959, by Gordon M. Tiffany, Staff Director, Commission on Civil

Rights, was made under date of April 14, 1959, exactly one month later, a copy of which reply was mailed to your affiant on the same date, both of which are attached and marked Exhibit "F" and Exhibit "G" respectively.

On May 7, 1959, letter addressed to affiant was received from W. Wilson White, Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, dated May 6, 1959, and reply thereto was made by affiant under date of May 13, 1959, copies of which letters are attached and marked Exhibits "H" and "I" respectively. A copy of the letter dated May 13 replying to White's letter of May 6 was forwarded to Gordon M. Tiffany, Staff Director, Commission on Civil Rights, for which acknowledgment was given by Tiffany under date of May 18, 1959, copy of which is attached and marked Exhibit "J", in which Mr. Tiffany outlined in detail his understanding that there was no liaison whatsoever between the Commission on Civil Rights and the United States Department of Justice.

On May 14, 1959, affiant received two letters under date of May 13 from Mr. Gordon M. Tiffany, Staff Director, Commission on Civil Rights, Washington D.C.

1. The first of which was relative to the statutory authority of state and local officials with respect to the conduct of elections in the State of Louisiana, a copy of which letter is attached and marked Exhibit "K". A reply thereto was made by your affiant by a letter under date of May 20, 1959, copy of which is attached and marked Exhibit "L", outlining in full all laws and constitutional provisions of the State of Louisiana relative to the conduct of elections, elections themselves, and suffrage.

2. The second of which, dated May 13, 1959, enclosed interrogatories consisting of some three hundred fifteen questions, a copy of which letter is attached and marked Exhibit "M". A reply thereto was made by your affiant by letter on May 28, 1959, a copy of which is attached and marked Exhibit "N", showing that no question or interrogatory offered was identifiable with any specific complaint and further suggesting that other interrogatories or questions could be confected and drawn which the Registrars could and would be willing to answer. On May 29, 1959, affiant received a reply to his letter of May 28 1959, copy of which is attached and marked Exhibit "O", which is self-explanatory.

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Mr. Gordon M. Tiffany, Staff Director, Commission on Civil Rights, by letter dated May 29, 1959, addressed to your affiant acknowledged receipt of your affiant's letter to him dated May 20, 1959, and also confirmed the telegram received by affiant signed by Gordon M. Tiffany dated May 29, 1959, copy of which is attached and marked Exhibit "P".

Reply by your affiant to telegram of May 29, 1959, was made by letter dated June 2, 1959, copy of which is attached and marked Exhibit "Q". Acknowledgement of affiant's letter of June 2, 1959, was made by Gordon M. Tiffany by letter dated June 4, 1959, copy of which is attached and marked Exhibit "R", stating that the entire matter was at the point for a policy decision on the part of the Commission on Civil Rights and that it would be referred to the Commission at its next meeting.

Your affiant received on June 15, 1959, letter addressed to him dated June 11, 1959, signed by Gordon M. Tiffany, Staff Director, Commission on Civil Rights, advising your affiant of the decision of the Commission to hold a hearing in Shreveport, Louisiana, on July 13, 1959, copy of which is attached and marked Exhibit "S", which did not set forth either
335 the time, place, names of accusers, accusations, or any of the parties to be called before the hearing. It did not set forth the membership of the body or committee which was scheduled to hold such hearing.

On July 13, 1959, date upon which the hearing was scheduled, your affiant's office in Baton Rouge, Louisiana, received letter dated July 8, 1959, signed by Gordon M. Tiffany, Staff Director, Commission on Civil Rights, notifying affiant of the hearing on July 13, 1959, in Shreveport and merely enclosing a copy of the Rules of Procedure of the Commission and statutes establishing the Commission. It did not set forth time, place, names of accusers, accusations, parties to be called, subject matter of the hearing, or membership of the body or committee to hold the meeting. At the time of receipt of this letter, affiant was in Shreveport, Louisiana, some 325 miles away from his office. A copy of this letter dated July 8, 1959, is attached and marked Exhibit "T".

Your affiant at all times has attempted to cooperate fully with the Commission on Civil Rights, its representatives and

employees, within the recognized limits as established by law and will continue to do so.

336 Jack P. F. Gremillion.
JACK P. F. GREMILLION.

Sworn to and subscribed before me, this 24th day of July, 1959, at New Orleans, Louisiana.

[SEAL] M. E. CULLIGAN, Sr.,
Notary Public.

337 *Attachment to Affidavit*

EXCERPT FROM ACT 482 OF 1958

The Attorney General shall give his advice and aid to any Registrar of Voters, deputy Registrar of Voters, and/or any employees of a Registrar of Voters, whose official acts have been or are being inquired into, challenged or disputed before any Federal Court, Federal Grand Jury, Federal Board, Federal Commission or Federal official, and he shall represent any Registrar of Voters, assistant Registrar of Voters, or employee in any suit or prosecution instituted in a Federal Court which relates to the official conduct of his office, all without costs or expense to said Registrar, Deputy Registrar and/or employee.

338 *Exhibit A to affidavit*

JANUARY 23, 1959.

(NOTE: This Letter Was Written Individually to Each Registrar of Voters in the State.)

Mr. Gordon M. Tiffany, the Director of the National Civil Rights Commission, called on me yesterday in Baton Rouge to discuss the future activities of his commission in the State of Louisiana. As you probably know, by various press releases, a State Advisory Committee has been set up in this State under the authority of the Congressional Civil Rights Act.

The Legislature adopted Act 482 of 1958, which made the Attorney General the legal advisor for all Registrars in any hearing or investigation, etc., before a Federal board or commission. I advised Mr. Tiffany of this act and he assured me that prior to any questioning or investigation of any Registrar, he would contact me first. He also advised me that the commission would use only their investigators and not those of

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the F.B.I. He also assured me that their purpose was to determine the facts objectively.

As a result of these assurances, I wish to advise you, as your attorney, that in the event any person calls upon you or your office claiming to be an investigator of the Civil Rights Commission, that you seek the benefit of legal counsel, either through your District Attorney or me, prior to discussing the matter with any person or persons.

No inference is to be drawn from this letter that any Registrar has reason to conceal anything from persons lawfully authorized to conduct investigations. The purpose of this letter is to inform you of the understanding which has been reached between the Director and this office as to procedure in the event of investigation.

We wish to assure you that we will render every assistance possible to you, either through this office, or through the cooperation of your District Attorney.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

cc: To all District Attorneys and Assistant District Attorneys in State.

339 *Exhibit B to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., January 28, 1959.

MY DEAR GENERAL: I wish to express my appreciation for your cordial hospitality on my recent visit to Louisiana. It appears clear to me that the spirit of cooperation which I encountered when I met with you is equally shared by this office. I also appreciate receiving the copy of Act No. 482 which you obtained for me.

I am enclosing a copy of our Rules of Procedure, which might be of some interest to you. I think a careful examination will reveal no apparent conflict between your obligations under State law and the rights of witnesses in any hearing conducted by this Commission. However, I would point out, as we discussed at our meeting, that the hearing is simply one method of recording testimony. It is a means, not an end in itself. Where a spirit of cooperation prevails, it may be unnecessary to conduct hearing. If it becomes necessary (following pre-

liminary inquiry) for us to call on registrars of voters, we will be pleased to advise you.

Very truly yours,

(S) GORDON M. TIFFANY,
Staff Director.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
State Capitol, Baton Rouge, Louisiana.

Exhibit C to affidavit

MEADORS, SHAW AND MEADORS,
ATTORNEYS AT LAW,
Homer, Louisiana, March 14, 1959.

Via Airmail special delivery. Return receipt requested.

Honorable GORDON M. TIFFANY,
Director, Federal Civil Rights Com.,
Washington 25, D.C.

DEAR SIR: We are writing on behalf of Mrs. Lannie Linton, Registrar of Voters, Claiborne Parish, Louisiana. At a meeting in Minden, Louisiana held on March 12, 1959, Colonel A. M. Rosenfeld, Chief of the Complaints Division of your Commission, stated that there was on file with your Commission four sworn statements charging the registrar with depriving citizens in Claiborne Parish of their voting privilege by reason of color, race, religion, or national origin.

My client knows these sworn allegations to be false since no such discrimination has been practiced. Accordingly, she wishes to prefer charges of perjury against the party or parties responsible for these misrepresentations. L.R.S. 14:123 designates such misrepresentations as perjury, a felony under the laws of Louisiana. Your attention is also invited to L.R.S. 14:25 which defines accessory after the fact as being any person who aids a felon with the intent that he may escape arrest, trial, conviction or punishment. An accessory after the fact is also guilty of a felony.

We herewith formally demand that you forward to us copies of the affidavits referred to, in order that a proper presentment may be made to the Grand Jury.

Colonel Rosenfeld also advised that agents from the Commission had investigated each of the affidavits by personal

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visit to the affiants here in Louisiana. This means that the crime has been completed in Louisiana.

I need not remind you that proceedings before a Grand Jury are secret, and no affiant need fear reprisals if he can establish his innocence to the satisfaction of such Grand Jury.

We shall await your reply and copies of the accusations.

Very truly yours,

W. M. SHAW.

341 *Exhibit D to affidavit*

MARCH 23, 1959.

Re: Interviews: U. Charles Mitchell, Registrar of Voters, Caddo Parish, Louisiana, and Mrs. Winnice P. Clement, Registrar of Voters, Webster Parish, Louisiana

Colonel A. H. ROSENFELD, Jr.
Director, Office of Complaints, Information and Survey, Commission of Civil Rights, Washington, D.C.

DEAR COLONEL ROSENFELD: In accordance with our agreement, I am enclosing copies of the captioned interviews taken in Caddo and Webster Parishes, Louisiana.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

342 *Exhibit E to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., 25 March 1959.

DEAR GENERAL: This will acknowledge receipt of the copies of the interviews taken in Caddo and Webster Parishes, Louisiana, on 13 March 1959. Will you please accept my thanks for forwarding this transcription to me.

Mr. Tiffany also joins me in thanking you for your cooperation and for the arrangements for the interview.

Sincerely yours,

(S) A. H. ROSENFELD, Jr.,
Director, Office of Complaints, Information and Survey.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
State Capital, Baton Rouge, Louisiana.

343 *Exhibit F to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington, 25, D.C., April 14, 1959.

DEAR MR. GREMILLION: For your information, the enclosed has been sent to Mr. Shaw.

Sincerely yours,

(S) GORDON M. TIFFANY,
Staff Director.

Hon. JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana.
Enclosure.

344 *Exhibit "G" to affidavit*

APRIL 14, 1959.

DEAR MR. SHAW: The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

Having considered the same, the request was denied by the following statement adopted by the Commission:

"The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

GORDON M. TIFFANY,
Staff Director.
(*For the Commission on Civil Rights*).

Mr. W. M. SHAW,
Meadors, Shaw & Meadors,
South Main Street, Homer, Louisiana.

345 *Exhibit "H" to affidavit*

DEPARTMENT OF JUSTICE,
Washington, May 6, 1959.

Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR MR. GREMILLION: As you are no doubt aware, the Department of Justice has been conducting an investigation in Webster Parish, Louisiana, of allegations of violations of the laws within the jurisdiction of the Department relating to discrimination against voters. In connection with this investigation, a formal request was made on December 1, 1958, by Department representatives of Mrs. Winnice Pratt Clement, Registrar of Voters, for permission to inspect the registration records in Webster Parish. The Department's representatives were advised that this request would be referred to you for decision. To date, the Department has received no communication indicating either that the request would be granted or denied.

I should appreciate very much your informing me as to whether this request will or will not be granted.

Sincerely,

(S) W. WILSON WHITE,
Assistant Attorney General,
Civil Rights Division.

346 *Exhibit "I" to affidavit*

MAY 13, 1959.

Mr. W. WILSON WHITE,
Assistant Attorney General,
Civil Rights Division,
Department of Justice, Washington, D.C.

DEAR MR. WHITE: I am in receipt of your registered letter of May 6, 1959, receipt requested, which reached this office today, concerning an investigation in Webster Parish, Louisiana, of alleged violations of laws relating to discrimination against voters. I note in your letter that you state this formal request was made by a member of your department on December 1, 1958, of Mrs. Winnice P. Clement, Registrar of Voters, for permission to inspect the registration records in her parish.

Mrs. Clement's attorney, Mr. John T. Campbell, addressed

an inquiry to me dated December 4, 1958, in which he asked for an opinion as to the authority of the Registrar to permit a representative of your office to examine the records and to photograph such documents as they desired. This inquiry was answered on December 5, 1958, in the form of a formal opinion, a copy of which I am attaching hereto and which is self-explanatory.

You will note that under Louisiana law the only person that can inspect the Registrar's records is a registered voter of the parish and further that the records can only be photographed upon written application of 25 registered voters of such parish. This opinion, as you are well aware, was written about the time that the Civil Rights Commission came into being. I have sent a copy of this opinion and all others of this office relating to Registrars of Voters, to Mr. Gordon Tiffany, Director of the Civil Rights Commission. Mr. Tiffany and his staff, I am sure, are aware of our laws because I have discussed them personally with him on several occasions.

An act of the 1958 legislature makes the Attorney General the legal representative of Registrars in this State in the conduct of any inquiry by the Federal Government into the affairs of their office. This information has also been communicated to Mr. Tiffany, who has agreed with me to contact this office concerning any rights into which that body may seek information from or concerning Registrars in this State.

347 In the early part of this year, the exact date of which I do not know, the Chief Investigator for the Civil Rights Commission, Colonel Rosenfeld, came to Louisiana and questioned the Registrar of Webster Parish, as well as the Registrar of Caddo Parish, in my presence concerning alleged discrimination in connection with voter registration. A transcript of the questions and answers was made and a copy was forwarded to Mr. Tiffany, the Director of the Civil Rights Commission. I am sure you can see this copy by contacting him.

Under the circumstances, and particularly the law of Louisiana, and specifically R.S. 18: 91, et seq., be advised that your request to inspect the registration records is denied until and

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unless you comply with the respective provisions of Louisiana law.

Very truly yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

cc: Mr. Gordon Tiffany, Director, Civil Right Commission; Mrs. Winnice P. Clement, Registrar of Voters, Webster Parish; Honorable L. H. Padgett, District Attorney, 26th District; Mr. John T. Campbell, Attorney at Law, Minden, Louisiana.

348

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, December 5, 1958.

No. 31, Registrar of Voters.

Discussion of authority of F.B.I. or Federal Commission dealing with civil rights to examine or photograph records of Registrars of Voters. See R.S. 18: 91 and 92 and USCA 42: 1975, et seq.

CAMPBELL, CAMBELL & MARVIN, Esqs.,
First National Bank Building,
Minden, Louisiana.

(Attention Mr. John T. Campbell).

GENTLEMEN: Receipt is acknowledged of your letter dated December 4, 1958, in which you request our opinion of the law with relation to the following facts:

Two agents of the Federal Bureau of Investigation called at the office of a Registrar of Voters stating that Mr. W. Wilson White, Assistant to the Attorney General of the United States, has requested them to contact the Registrar of Voters and ask permission for representatives of the F.B.I. to come into the Registrar's office and examine records pertaining to registration of voters and to photograph such documents as they desired. The Registrar wishes to know whether this request should be complied with.

R.S. 18: 91 of the Revised Statutes of the State of Louisiana of 1950 in part designates records of the Registrars which are permanent records, and doubtless the records which are sought to be photographed are among those listed in Section 91.

Section 92 of the above Title 18 in part provides that all of the records referred to in Section 91 are public records and shall at all times during office hours be open to inspection by

any qualified registered voter; also in the country parishes, upon written application of 25 or more qualified registered voters of the parish, these records shall be open for copying, photographing or photostating, unless such inspection, 349 copying, photographing or photostating will seriously interfere with the registration of voters or in the performance of any duty of the Registrar imposed by law, under which circumstances provision must be made to permit such inspection under certain conditions and limited time set forth in the Section.

It is necessary to consider Louisiana law, as above set forth, with relation to any possible conflicts with any Federal law (See Civil Rights Commission and Powers, Public Law 85–315; 71 Stat. 634, U.S.C.A. 42: 1975 et seq.)

One of the powers vested in the Federal Commission is to study and collect information concerning the legal developments constituting a denial of equal protection of the laws under the Constitution (U.S.C.A. 42: 1957 c(2)). There may be other provisions of the Federal law, or directives of the Commission, pertinent to your inquiry. Suffice it to say, there does appear broad powers under the Federal law dealing with Civil Rights, which may be construed as supplanting any State law in conflict with the Federal provisions.

It may well be that in certain instances an F.B.I. agent is not a qualified voter of any particular area involved; moreover if a qualified voter, it may be impossible in certain instances to obtain written application of 25 registered voters of the parish for photographing records. Under such circumstances, these agents would be deprived of the right of inspection or photographing records under the plain terms of R.S. 18: 92. In the absence of any clearcut decisions of the Courts on the particular subject, we are reluctant to express any opinion as to legality of such refusal of inspection or photographing by F.B.I. agents, if they are clothed with full authority as may exist or which is valid, for making inspections or photographing. It is our opinion that until such time as some proper court holds unconstitutional the provisions of R.S. 18: 92, or unless some court directs to the contrary, it is our opinion that

the Registrar of Voters should adhere strictly to the provisions of R.S. 18: 92.

Sincerely yours,

(S) JACK P. F. GREMILLION,
Attorney General.

350 *Exhibit J to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 18, 1959.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL: May I take this opportunity of thanking you for forwarding to me a copy of your recent letter to Mr. W. Wilson White, Assistant Attorney General, respecting his request for an examination of the registrar's records in Webster Parish.

As I have informed you in the past, there is no connection between the Department of Justice and the Commission on Civil Rights. We operate in different manners, based upon our authorizations under the law. The Commission on Civil Rights has from its inception been only a fact-finding body, charged with gathering the facts resulting from complaints which are filed by individuals and attempting to gather all the facts, whether favorable or unfavorable.

Permit me to again express my appreciation for the information which you have forwarded to me.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

351 *Exhibit K to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 13, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL: You were kind enough to send us a copy of one of your opinions relating to the disclosure of voting records. In order that our file may be complete, we would

much appreciate it if you will forward such other opinions, memoranda, instructions and other documents concerning voting and registration matters in Louisiana which may have been issued by you or your predecessors since 1950.

I was very much interested in the Governor's comments with reference to his statutory authority in the appointment of Registrars and, in general, his relationship to other officials of the state and local governments in the matter of the conduct of elections. I would be most grateful if your office could furnish me with an informal comment which would explain the practical application of the statutory authority distributed among the state and local officials from the Governor down with respect to the conduct of elections.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

Exhibit L to affidavit

352 STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
Baton Rouge, May 20, 1959.

Mr. GORDON M. TIFFANY,
Staff Director, Commission on Civil Rights,
Washington 25, D.C.

DEAR MR. TIFFANY: Receipt is acknowledged of your letter of May 13, 1959.

In order to answer the first paragraph of your letter, I am giving you below the statutory and constitutional law concerning registration of voters, registrars and the election laws:

Laws concerning registration of voters and registrars are contained in West's Revised Statutes of Louisiana, Title 18, Sections 1–223. General primary election laws are in Title 18, Sections 281–382; in municipalities having a population of less than 5000, Sections 431 and 432 cover. If candidates are in the Armed Forces, Sections 481–484 cover. General Election Laws are found in Title 18, Sections 541–781. Absentee voting is covered by Sections 102–1111 of this same title. Voting machine laws are found in Sections 1161–1196. Election contests are covered by Sections 1251–1303. National Elections are covered by Sections 1381–1431. Constitutional provisions relative to suffrage and elections are contained in the Constitution of Louisiana of 1921, Article VIII.

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Under the different Sections of the Statutes enumerated above in West's edition of the Louisiana Revised Statutes, there is shown all opinions which have been rendered by this Department, citations being given to the bound volumes of the Reports and Opinions of the Attorney General and there is also shown citations of cases which have gone to the Courts. I presume that this material available in your Libraries at Washington.

In regard to the second paragraph of your letter, the Statutes enumerated above set forth the duties of the particular officials in the respective types of elections. The actual conduct of the election itself is solely under the control of the election
353 officials who are the Commissioners, Alternate Commissioners of Watchers whose names are submitted by the candidate in a primary election and whose names in a general election are submitted by the Republican, Democratic or any other qualified political party in this State.

I trust that the above will give you the information desired. However, if I can be of further assistance, I shall be glad to have you call upon me.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:aa.

354 *Exhibit M to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington, D.C., May 13, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: Following our recent conversation with you and your Governor, I have discussed the matter of Interrogatories with the Commission on Civil Rights, at its monthly meeting held in Chicago on Wednesday, May 6, 1959. The Commission authorized me to proceed with the preparation and forwarding of Interrogatories to you, accepting your assurance that you would cooperate fully to see that we receive the information requested.

I am, therefore, enclosing herewith sufficient Interrogatories to be answered, under oath, by the Registrars of Voters in nine-

teen (19) Parishes, the names of the Parishes being provided on the Instruction Sheet attached to the Interrogatories.

You will appreciate, I am sure, the usual circumstances of an Interrogatory especially when it may be used as an alternative to a full and complete examination upon a hearing. There can be no doubt that these questions are comprehensive, to say the least. Nevertheless, we are still in agreement that if a full dress hearing may be avoided by the use of the Interrogatories it is definitely preferable. It is not the desire of the Commission to hold hearings simply for the sake of holding hearings but only insofar as they are necessary to secure the facts.

There were two conditions which the Commission imposed in connection with taking Interrogatories; first, that said Interrogatories should be returned to this office not later than two weeks from the day they were received by your office; and, second, that the Commission will still be free to holding a hearing if, in its judgment, such additional action is necessary to secure the information which it needs to carry out its statutory duties.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

355 *Exhibit N to affidavit*

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
Baton Rouge, May 28, 1959.

Mr. GORDON M. TIFFANY,
Staff Director, Commission on Civil Rights,
Washington 25, D.C.

DEAR MR. TIFFANY: Reference is made to your letter of May 13, 1959, addressed to me to which is attached 315 questions submitted under authority of the Commission on Civil Rights for answer under oath and signed by each Registrar of Voters in nineteen parishes of the State of Louisiana.

On May 20, 1959, the Registrars of Voters in the parishes involved were furnished these questions for study, and sixteen of them met with me on May 26, 1959. I conferred with these Registrars of Voters pursuant to Act 482 of 1958 of the Louisiana Legislature which in part requires that I give them legal advice. I was instructed by all of the Registrars at the above referred to meeting to advise you that they would not answer

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these questions for the principal reasons that a great number of them are wholly unrelated to the functions of their offices, and they are not accompanied by any specific complaints, the nature thereof, nor the name of any complainant. However, I was further instructed to advise you, that these Registrars have no objections to the answering of any pertinent questions relating to specific complaints by a named complainant, and in this connection to cooperate fully in the development of such facts.

In your letter to me of May 13, 1959, you infer that these interrogatories, if answered fully, are based upon my assurance that I would cooperate fully to see that you would receive the information requested; moreover, there is agreement that if a full dress hearing may be avoided by the use of interrogatories it is definitely preferable. Finally you state that the Commission will still be free to hold a hearing if, in its judgment, such additional action is necessary to secure the information which it needs to carry out its statutory duties.

So far as I am concerned, I still adhere to my commitment to be cooperative, but frankly my appreciation of our understanding was that if your Commission had specific complaints you would furnish interrogatories covering each specific complaint and that the use of interrogatories would obviate any necessity for holding hearings.

Since the same 315 questions are submitted to all of the Registrars of the parishes involved, and not a single question is identifiable with any specific complaint, it is obvious that my understanding about the interrogatories has not been complied with, in this respect. Again, it is inconceivable
356 to me that the Commission would find as pertinent certain of the questions which in some instances have nothing to do with the duties of the Registrars as provided by law (e.g., certain questions dealing with absentee voting, or personal beliefs as regards the NAACP No. 97, or personal beliefs as regards out of parish or state persons previously registered, No. 266, 267, and 268, or personal beliefs with regard to educational or property qualifications Nos. 311 and 312, or any other personal beliefs). There are other questions propounded which a Registrar would not likely be able to answer, as for example question No. 13 which refers to the name of a person who appoints a Registrar in the country parishes of the state, in the face of the law which provides for such an appointment

generally by a police jury, composed of a body of men of a number determined by the population of a parish.

It would be difficult to estimate the great length of time required for any Registrar to make all of the research necessary for answering such of the 315 questions which could be answered, and particularly those applicable to terms of office preceding the terms of the present incumbents, or since 1955. It was not my intention to acquiesce in any plan or procedure by way of interrogatories, which would involve such irrelevant matters as are contained in these interrogatories, and particularly where such burdens and hardships would be put upon the Registrars.

Finally, your attention is called to a newspaper clipping appearing in the New Orleans States and Item, of May 19, 1959, from which I quote as follows:

"By Sam A. Hanna

"WASHINGTON.—The Civil Rights commission has reported a spurt of voting rights complaints from Louisiana and is still considering holding a full-scale investigation of them."

"The commission said it received 95 complaints from Louisianians who claimed interference with their voting privilege since the agency began operation in 1957. Sixty-four of these were sent last Feb. 16."

* * * * *

"From other sources, it was learned that the commission discussed holding a public hearing in Northern Louisiana when it met in Atlanta last month, but instead decided to postpone action until its May meeting."

"In the meantime, Tiffany conferred with Louisiana officials in Baton Rouge concerning Louisiana law that closes certain election records except to local residents who petition to see them. Tiffany is known to have reported back to the
357 commission, meeting in Chicago May 6, that he had no success but the commission resolved to try another but so far unspecified approach to collect the information."

"Any decision to hold an investigation has thus been postponed until the commission's next meeting, in Los Angeles in mid-June. * * *"

If the Commission will still insist upon a hearing despite the interrogatories, as seems likely from the above, there does not appear much use in going to all of the trouble and inconven-

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ience involved in attempting to answer so many interrogatories which appear to me so irrelevant. Perhaps other interrogatories could be confected which the Registrars could or would be willing to attempt to answer, and in this connection I should be pleased to hear from you.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:aa.

358 *Exhibit "O" to affidavit*

P WXM059 LONG GOVT DL PD—TX WASHINGTON DC 29 259PME—
THE HON JACK P. F. GREMILLION, ATTY GENERAL OF LOUISIANA—DEPT OF JUSTICE BATON ROUGE LA—1959 MAY 29 PM 2 36

ACKNOWLEDGING YOUR LETTER OF MAY 28, YOU COMMENT THAT CERTAIN QUESTIONS IN THE INTERROGATORY ARE OBJECTIONABLE BECAUSE IMMATERIAL AND IRRELEVANT, THAT OTHERS ARE CONTRARY IN LAW. AS COUNSEL TO THE REGISTRARS AND FOR THE PURPOSE OF THIS INTERROGATORY SUCH OBJECTIONS MAY BE NOTED BY YOU IN THE REPLY. QUESTIONS OF MATERIALITY, RELEVANCY AND OTHER OBJECTIONS WILL BE CONSIDERED ALONG WITH THE COMPLETED ANSWERS BY THE COMMISSION IN DETERMINING THE NECESSITY OF A HEARING. THE INTERROGATORIES COVER SPECIFIC ALLEGATIONS OF THE COMPLAINTS RECEIVED BY THIS COMMISSION. SUCH ADDITIONAL QUESTIONS AS APPEAR IN THESE INQUIRIES ARE SUBMITTED BY THE STAFF OF THE COMMISSION AS RELEVANT TO OUR STATUTORY DUTIES.

AT NO TIME HAS THE COMMISSION AGREED TO FURNISH THE SPECIFIC COMPLAINTS OR INFORMATION WHICH DIRECTLY OR INDIRECTLY WOULD DISCLOSE THE IDENTITY OF COMPLAINANTS. IN THIS REGARD WE CALL YOUR ATTENTION TO THE ACTION OF THE COMMISSION AS NOTED IN MY LETTER OF APRIL 14TH, ADDRESSED TO ATTORNEY WILLIAM SHAW, A COURTESY COPY OF WHICH WAS ADDRESSED TO YOU.

WE APPRECIATE YOUR CONTINUED COOPERATION AND WE TRUST THAT THE COMPLETED INTERROGATORIES WILL BE RECEIVED IN THIS OFFICE BY JUNE 5. SINCERELY,

GORDON M. TIFFANY, STAFF DIRECTOR.

359 *Exhibit P to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 29, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: This will acknowledge receipt of your letter of May 20, 1959 and will confirm our wire which was sent in reply to your letter of May 28.

Thank you for the citations which will be helpful. Our inquiry was to make certain that we had all pertinent unpublished rulings. Am I correct in assuming, on the basis of your letter, that there is no publication issued by your office (or perhaps another State office) which enumerates laws, rulings and instructions for distribution to and use of the local registrars?

As to the interrogatories, we trust we will receive the replies on or before June 5. This will give us time to refer the results to the Commission for its consideration and report.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

360 *Exhibit Q to affidavit*

JUNE 2, 1959.

Honorable GORDON M. TIFFANY,
Director, Civil Rights Commission,
Washington, D.C.

DEAR MR. TIFFANY: Your telegram of May 29, 1959 was received in my Baton Rouge office during my absence from the city, and I have had no opportunity of answering until today.

I regret that you have not acquiesced in my suggestions of May 28, with particular reference to new questions accom-

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panied by specific complaints, as well as the names of the complainants, but instead you suggest the noting of objections and completion of the answers by June 5. If the form or subject matter of these questions were otherwise not objectionable, the time necessary therefor, would in my opinion, extend far beyond June 5. However, as stated in my letter of May 28, sixteen of those Registrars gave me the instructions which I passed on to you, and I have no alternative but to request your reconsideration of my May 28 letter.

I cannot conceive of any valid reason why these Registrars should not be furnished with the nature and cause of complaints or the accusations made against them. Of course, in criminal prosecutions an accused is entitled to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor (see: Amendment VI Constitution). Also, of course, no person shall be compelled in any criminal case to be a witness against himself (Amendment V Constitution). If the complainants contend a denial of the equal protection of the laws (Amendment XIV) or a denial of a right to vote (Amendment XV), it seems logical to assume that orderly process would require such complainants to come forward, with specific complaints so that the Registrars would have an opportunity of joining issue. If, in the submission of these 315 questions in their present form, the Commission is attempting to assume prerogatives that are usually those of a grand jury, it would then appear that some provision would be taken into account relative to immmunity from prosecution. I have been given to understand that these Registrars have nothing to hide, but at the same time it may well be that they would be very apprehensive of the results of such a severe examination as is proposed by these 315 questions, without knowing what the complaints are. It is not likely that the Commission, even though inadvertently, would not
361 recognize State laws as valid as regards registration and voting until upset by the Courts, under rights reserved to the States (Amendment X Constitution).

I have tried to point out to you that these Registrars feel that they are being imposed upon unnecessarily, and I fail to see why such a burden should be placed upon them as to require them to attempt an answer to these numerous questions, many of which seem clearly to be immaterial.

I sincerely hope that you will reexamine this matter, and then adhere to the suggestions contained in my letter of May 28, 1959.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:mal.

362 *Exhibit R to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., June 4, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: Thank you for your letter of June 2, 1959 in answer to the telegram sent you by this office on May 29, 1959.

I feel that any reexamination of your position on the interrogatories is now at a point which requires a policy decision by the members of this Commission. Therefore, I shall place the matter as it stands before the Commissioners at their next meeting. Any further proceedings in this situation will, of course, be guided by their decision.

Sincerely yours,

(S) GORDON M. TIFFANY.

363 *Exhibit S to affidavit*

COMMISSION ON CIVIL RIGHTS,
(STAFF DIRECTOR),
Washington 25, D.C., June 11, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: This will advise you that the Commission, at its official meeting held here yesterday, June 10, 1959, authorized a hearing on Louisiana voting complaints pursuant to Sec. 105(f) of the Civil Rights Act of 1957, 71

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Stat. 634. The hearing is scheduled to be held on July 13, 1959 in Shreveport, Louisiana.

Sincerely yours,

GORDON M. TIFFANY,
Staff Director.

364 *Exhibit T to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., July 8, 1959.

Honorable JACK GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: As you are aware, the Civil Rights Commission is holding a Hearing on Voting in Shreveport on 13 July 1959 and we would be pleased to have you attend.

For your information we are enclosing a copy of "Rules of Procedure" and also a copy of Public Law 85–315, 85th Congress, which established this Commission. In this connection, your attention is invited to Sec. 102(h) which states, "In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings."

We are looking forward to visiting Shreveport and to a Hearing that will be beneficial to all concerned.

Sincerely yours,

(S) GORDON M. TIFFANY.

Recd: 7–13–59.
Enclosures, 2.

373 In U.S. District Court Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General)
Baton Rouge, August 3, 1959.

In re Larche, et al. v. Hannah, No. 7479.

CLERK, U.S. DISTRICT COURT,
Post Office Building,
Shreveport, Louisiana.

DEAR SIR: There are enclosed herewith, in triplicate, affidavits from the following complainants:

Pauline A. Culpepper, Bienville Parish
J. Walton Crawford, Red River Parish
B. W. Berry, Tensas Parish
Winnice P. Clement, Webster Parish
Cecil E. Manning, East Carroll Parish
Estelle Wilder, Jackson Parish.

Yours very truly,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC:eak
encls.
ccs: Mr. William Shaw, P.O. Box 450, Homer, Louisiana; Mr. Fitzhugh Wilson, U.S. Attorney, Post Office Building, Shreveport, Louisiana.

374 *Affidavit*

Filed August 5, 1959

STATE OF LOUISIANA,
Parish of Bienville (ss):

[File endorsement omitted.]

Before me, the undersigned authority, personally came and appeared Pauline A. Culpepper, known to me, who being first duly sworn did depose and say:

That your affiant is the duly appointed, qualified, and acting Registrar of Voters of the Parish of Bienville, State of Louisiana; that affiant is one of the complainants in the case entitled Mrs. Margaret M. Larche, et al. v. John A. Hannah, et al., Civil Action No. 7479, United States District Court, West-

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ern District of Louisiana, Shreveport Division; that your affiant was served with a subpoena issued by Honorable John A. Hannah, Chairman of the Commission on Civil Rights ordering your affiant to appear and testify and as well produce all of the official records of the office of the Registrar of Voters, Parish of Bienville at a hearing to be held July 13, 1959, at the United States courtroom, Shreveport, Louisiana, located in the Parish of Caddo; that for the reasons as outlined in the petition and pleadings filed in the said cause, your affiant suffers and will continue to suffer irreparable injury; that affiant is informed that the Commission on Civil Rights has a complaint or complaints against affiant accusing affiant of having deprived certain United States citizens whose names are unknown to your petitioner of their right to vote or to have their vote counted because of their color, race, religion, or national origin; that a questionnaire prepared by the Commission on Civil Rights was received by affiant which has not been answered; that affiant's legal counsel in this matter appointed by law is Attorney General, Jack P. F. Gremillion, whose advice and counsel has been relied upon and followed; that affiant has never been furnished by the Commission on Civil Rights nor by anyone with the names of affiant's accusers or the nature and cause of the accusation made against affiant before the Commission on Civil Rights.

PAULINE A. CULPEPPER.

Sworn to and subscribed before me this 1st day of August, 1959.

H. RUPERT SLEDGE,
H. Rupert Sledge,

Clerk of Court in and for the Parish of Bienville, Louisiana and Ex-Officio a Notary Public.

Clerk's note

Similar affidavits executed by J. Walton Crawford, B. W. Berry, Winnice P. Clement, Cecil E. Manning and Estelle Wilder, appearing on pages 374 through 379 inclusive are omitted in printing.

380 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL. IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA, COMPLAINANTS

v.

JOHN A. HANNAH, ET AL. INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS, DEFENDANTS

[File endorsement omitted.]

Stipulation in and Between Complainants and Defendants

Filed August 7, 1959

1

Complainants, Mrs. Margaret M. Larche, Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Sidney W. Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry Earl Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell, are citizens of the United States and the State of Louisiana, taxpayers, qualified voters, and Registrars of Voters in and for their respective parishes of the State of Louisiana.

2

Defendants: John A. Hannah, a resident of East Lansing, Michigan; Robert C. Storey, a resident of Dallas, Texas; John S. Battle, a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, a resident of South Bend, Indiana; Doyle E. Carlton, a resident of Tampa, Florida; and George M. Johnson, a resident of the State of California, presently residing in Washington, D.C., are citizens of the United States and, as well, members of the Commission on Civil Rights.

381 3

The Attorney General of Louisiana, Honorable Jack P. F. Gremillion, is legal counsel designated by the legislature for all

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Registrars of Voters of the State of Louisiana, and the other counsel of record are attorneys for the complainants respectively in their individual capacities.

4

Honorable Gordon M. Tiffany is the duly appointed Staff Director for the Commission on Civil Rights and has acted in this matter by virtue of such authority and under the authority of the Commission on Civil Rights.

5

The Commission on Civil Rights received sixty-seven (67) written allegations prior to February 27, 1959, under oath or affirmation, from certain citizens of the United States alleging they were citizens of the State of Louisiana and that they had been deprived of their right to vote because of their color, race, religion, or national origin, and that these were received sometime prior to February 27, 1959, a number of which alleged generally that the plaintiffs in suit, through their acts and deeds, had caused such deprivation.

6

That after the Commission on Civil Rights received these complaints, investigators of the Commission were sent to the State of Louisiana and investigated the same.

7

The Commission, through its Staff Director, Gordon M. Tiffany, had conferences with Attorney General Jack P. F. Gremillion, concerning the possibility of submitting questionnaires to Registrars of Voters in lieu of a hearing. Prior thereto, attorney W. M. Shaw, on behalf of his client,
382 Mrs. Lannie L. Linton, addressed a letter to the Commission dated March 14, 1959 (copy attached), which was replied to by the Commission under date of April 14, 1959, signed by Director, Tiffany (copy attached), and that the resolution of the Commission quoted in said letter of April 14th was duly passed by the Commission and represents its official action.

8

Thereafter, Director Tiffany furnished to each of the Registrars and to Attorney General Jack P. F. Gremillion a questionnaire (copy attached). After conference with the Registrars of Voters, Attorney General Gremillion addressed a letter to Director Tiffany dated May 28, 1959 (copy attached) to which Director Tiffany replied on May 29, 1959 by telegram (copy attached), which was replied to by Attorney General Gremillion on June 2, 1959 (copy attached). Following this communication, a letter dated June 4, 1959 (copy attached) from Gordon M. Tiffany to Attorney General Gremillion was received.

9

That the Commission on Civil Rights at an official meeting held in Washington D.C., on June 10, 1959, authorized a hearing on Louisiana voting complaints, pursuant to Section 105 f of the Civil Rights Act of 1957, 71 Stat. 634. The hearing was scheduled to be held on July 13, 1959 in Shreveport, Louisiana.

10

Thereafter the Commission duly issued subpoenas in connection with the aforesaid hearing of July 13, 1959 and caused said subpoenas to be served on plaintiffs in suit No. 7479 by the United States Marshal. Subpoenas were also served by said Marshal on the plaintiffs in suit No. 7480 on the docket of this Court. The remainder of the said subpoenas were served through the Commission's own process. The total number of subpoenas caused to be issued by the Commission numbered approximately sixty (60). True and accurate copies of
383 the subpoenas served on the plaintiffs in the two respective suits are attached to said petitions, the originals of which were all served prior to July 9, 1959. Attached to these subpoenas was a copy of the official Rules Of Procedure For Hearings of the Commission on Civil Rights as well as a copy of the said Civil Rights Act, and each plaintiff was tendered mileage and per diem in accordance with the said Act.

11

Exhibits A through T inclusive, attached to and made a part of the affidavit filed herein by Jack P. F. Gremillion,

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Attorney General of the State of Louisiana, are true and accurate copies of the originals of said copies, provided, however, that defendants reserve the right to make objections to the relevancy and materiality thereof.

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Attorney for Complainants.

W. Wilson White,
W. WILSON WHITE,
Assistant Attorney General of the United States,

T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney, Western District of Louisiana,
Attorneys for Defendants.

384 [Letter dated March 14, 1959, omitted. Printed side page 340 supra.]

385 [Letter dated April 14, 1959, omitted. Printed side page 344 supra.]

386 *Attachment to stipulation*

COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C.

INSTRUCTIONS ACCOMPANYING INTERROGATORIES

The attached questions should be answered by Registrars in each of the following parishes:

Bienville
Bossier
Caddo
Caldwell
Claiborne
Concordia
De Soto
East Carroll
Iberia
Jackson
Madison
Morehouse
Ouachita
Rapides
Red River
Richland
Tensas
Webster
West Feliciana

533716—59——12

Answers should be numbered to correspond with question numbers.

Two copies of the questions are furnished herewith for each Registrar. One copy should be returned by each Registrar along with his answers. The other copy may be retained by the Registrar in each case.

Extra copies are attached for the files of the Attorney General.

Answers must be under oath, and must be signed by each Registrar as a sworn statement.

Within two weeks from date of receipt by Louisiana Attorney General answers must be returned to the following address:

Commission on Civil Rights,
726 Jackson Place, N.W.,
Washington 25, D.C.
Attention: Voting study team.
Attachments.

387 QUESTIONS FOR REGISTRARS

1. Please state your name, age, date of birth and place of residence?
2. How long has this been your residence?
3. Where did you previously reside?
4. What is your present occupation?
5. What other positions or jobs have you held?
6. How long for each?
7. What are your educational qualifications?
8. Under the law of Louisiana, what educational qualifications do you understand are necessary for the office of Registrar?
9. Are you a lawyer?
10. How long have you been a Registrar?
11. Were you ever a Registrar in this or any other Parish before?
12. Who appointed you to office (for each applicable term)?
13. How long did you know Mr. ———— (name of appointing official) before he appointed you?
14. What was the nature of your acquaintance?
15. Did anyone else recommend your name to him?
16. Is so, who?

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17. How long have you known such recommending person?
18. What was the nature of your acquaintance with him?
19. In your own opinion, why do you believe you were appointed?
20. What are the qualifications for the position of Registrar?
21. Are you a qualified elector of your Parish?
22. How long have you been a qualified elector?
23. When were you first registered to vote in your Parish?
24. When were you last registered?
25. Were you ever required to re-identify yourself for purposes of registration?

388 26. What is your term of office as a Registrar?

27. When you took office, did you have to take an oath?
28. What was the nature of that oath?
29. What conduct was required of you as a Registrar under the terms of that oath?
30. Is it your understanding that the oath you took is a "public record" under the law of Louisiana?
31. Do you have any objection to this Commission or duly authorized members of its staff inspecting your oath, or any other written matters compiled by you, as a Registrar, which are "public records"?
32. How are you paid for your work as a Registrar?
33. How much?
34. Is there any limit upon the total amount you can receive during any period of time?
35. How much money did you receive for your services as a Registrar this year?
36. In 1958?
37. In 1957?
38. In 1956?
39. (If applicable.) In previous years?
40. Did you receive any sum or sums of money from the State of Louisiana for any services other than those in connection with your work as Registrar in any of the years involved?
41. Have you ever neglected, refused, or been unable to serve since your appointment to office?
42. If so, for what reasons?
43. Are you now a Registrar of your Parish?

44. How often have you been available to take applications for registration this year?

45. Where?

46. In 1958?

47. In 1957?

389 48. In 1956?

49. What hours have you kept the place of registration open on these occasions?

50. How many hours each day?

51. Since 1955, how many people came to make application—white and Negro?

52. Since 1955, how many applications did you receive—white and Negro?

53. Since 1955, how many people—white and Negro—were turned away without an opportunity to submit applications?

54. Why were they turned away? Explain.

55. Since 1955, how many applications by white persons were approved for registration?

56. Since 1955, how many applications by Negro persons were approved for registration?

57. Since 1955, how many registration certificates were issued to white persons?

58. Since 1955, how many registration certificates were issued to Negroes?

59. Since 1955, if there is a discrepancy between applications approved and certificates issued, how do you account for the discrepancy?

60. Do you use separate facilities for registration of white persons and Negroes?

61. Are the rooms and facilities physically substantially the same?

62. Do you have any regulations or practices governing the number of people who may complete application forms at the same time?

63. Are these the same for white and Negro applicants?

64. Do you have regulations or practices which restrict the number of individuals admissible in the registration room or rooms?

65. Are these the same for white and Negro applicants?

66. Please state the qualifications for registration under Louisiana law.

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67. How do you determine whether an applicant for registration is "of good character"?

68. Do you use the same test of good character for both white and Negro applicants?

390 69. How do you tell whether or not an applicant "understands the duties and obligations of citizenship under a republican form of government"?

70. Do you use the same tests for those matters for both white and Negro applicants?

71. Do you believe that Negroes generally are as likely as whites to be qualified?

72. Do you require white applicants to complete a registration form?

73. Do you require Negro applicants to complete a registration form?

74. Do you use the same application form for both whites and Negroes?

75. Is the information required to be given under oath?

76. Do you ask preliminary or supplemental oral questions of white applicants?

77. Do you ask preliminary or supplemental oral questions of Negro applicants?

78. What questions do you ask?

79. By what authority do you ask such questions?

80. If you ask preliminary questions, have you ever refused to give an applicant a form because of the way such preliminary questions were answered?

81. If you ask supplemental questions, have you ever rejected an application because of the way such supplemental questions were answered?

82. By what authority did you refuse the applicant a form or reject the applicant?

83. Do you believe that the use of an application form is necessary?

884. Is it required by law for all applicants—both white and Negro?

85. Do you regularly require the applicant to take an oath?

86. What oath and why?

87. Are the application forms a part of the official records of the Registrar?

88. Do you help applicants complete their forms?

89. Under what circumstances do you help applicants?

90. Do you give such help to both white and Negro applicants?

391 91. Do you apply the same standards of good character to an individual who cannot read or write as you apply to one who can read or write?

92. How do you determine the reputation of an applicant who cannot read or write?

93. If an applicant cannot read or write, what do you do to ascertain whether or not he is attached to principles of the State and Federal Constitutions?

94. Do you have rules and regulations indicating the "type of attachment" that is needed to qualify such applicant?

95. Do you believe that people who cannot read or write should be allowed to register?

96. Under what circumstances should people who cannot read or write be allowed to register?

97. If an applicant who cannot read or write is a member of the NAACP, can he be registered as an individual who is well disposed to the good order and happiness of the State of Louisiana and the United States?

98. What tests do you apply to determine whether an individual who cannot read or write is well disposed to the good order and happiness of the State of Louisiana and the United States?

99. What provision or provisions of the Louisiana Constitution and the United States Constitution do you use in order to test an applicant's ability to read and reasonably interpret?

100. Have you used the same provisions more than once?

101. What are the sections of the Louisiana Constitution that you normally use?

102. What are the sections of the United States Constitution that you normally use?

103. Do you use the same sections for both Negro and white applicants?

104. Is a standard interpretation of these provisions furnished you by any State or Parish official?

105. Is a standard interpretation of these provisions furnished you by person or persons in a non-official capacity?

106. If answer is yes, please identify person, persons or organizations furnishing such information or interpretation.

392 107. If no individual or group, official or non-official, furnishes any information regarding interpretation of

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these provisions, what are the standards you apply to determine whether an applicant has given a reasonable interpretation?

108. Upon what sources do you rely for evaluating the adequacy of an interpretation given by an applicant?

109. Have you had any formal education on constitutional or statutory interpretation?

110. If so, when, where and what?

111. By what means do you determine the identity of an applicant?

112. What proof or proofs of identity do you require?

113. Do you require confirmation of identity?

114. What form of confirmation of identity do you require?

115. Do you use the same means of satisfactory proof of identity for both Negro and white applicants?

116. What form of proof of residence within the State and Parish do you require of applicants?

117. If more than one type of proof is satisfactory to you, please list and describe the several types of satisfactory proof of residence in the State and Parish.

118. Since 1955, have you on your own motion ever taken action to remove the name of any previously qualified voter from the official voting list of your Parish?

119. Upon what grounds did you take such action? (If in more than one instance there were separate and different grounds, please identify the grounds in each case.)

120. What form of notice, if any, was given to the previously qualified voters?

121. Since 1955, list the name and race of each previously qualified voter removed from the official voting list as the result of your action.

122. Since 1955, list the name and race of each previously qualified voter who satisfactorily established the propriety of his registration following your action to strike his name from the rolls.

123. Since 1955, list the name and race of each previously qualified voter, the propriety of whose registration has been challenged by two registered voters of the Parish.

393 124. In each instance, give the date of such challenge by affidavit, the reason, if any, for such challenge, the ward and precinct of such previously qualified voters, and the names of the affiant challengers.

125. In each instance, what notice was given to the previously qualified voter whose registration was so challenged by the affidavit of two registered voters?

126. In each instance, was the previously qualified voter able to make satisfactory proof of the propriety of his registration?

127. List the names, race, and date of striking of each previously qualified voter whose registration has been stricken since 1955.

128. Has any qualified voter in your Parish had his name stricken since 1955 as the result of a proceeding filed in the District Court of your Parish?

129. List the name and race of each such previously qualified voter whose registration was so stricken as the result of suit filed in the District Court of your Parish.

130. In each instance, list the name and race of the qualified voter bringing the particular proceeding in the District Court of your Parish.

131. Give the dates when such cases were docketed in the District Court, the docket numbers, and the dates when the cases were heard.

132. In any of the cases listed, where the jury determined that the challenged voter was qualified, did the party applying appeal?

133. In any of the above cases, if the previously registered voter was stricken by action of the jury, did such party take appeal?

134. What was the result of this appeal?

135. Has any individual stricken by vote of the jury subsequently been indicted for illegal or fraudulent registration or any other crime against the State of Louisiana, such as perjury?

136. Give the names of individuals so indicted, along with the disposition of the individual cases.

137. In any of these criminal cases, was the challenging elector a witness against the defendant?

138. Is there provision for absentee voting in your Parish?

139. Who is responsible for administering absentee voting?

394 140. Since 1955, how many Negroes and how many whites have voted through absentee provisions?

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141. On the absentee forms in which the voter indicates his choice, is there a requirement that the race of the voter be indicated?

142. What form or forms of proof of citizenship and age do you normally require of an applicant?

143. If more than one form of evidence of citizenship and age is satisfactory to you, please list the various forms.

144. Does the State Board of Health furnish periodic listings of persons in your Parish who have died?

145. Do you remove all names so furnished from the registration lists?

146. If an individual is removed from the registration list by error, is that person required to re-register?

147. Do you remove names so received from the State Board of Health on your own motion and without notice to the families of the individuals involved?

148. Do charitable institutions furnish lists to you showing the admission of inmates?

149. Upon receipt of such names, do you automatically erase them from the registration lists?

150. Do you first ascertain the exact nature of the admission into the charitable institutions?

151. Have you ever made demand of apartment, hotel, lodging, rooming, or boarding house operator that he furnish you a list of the occupants over the age of 21 who have resided continuously for 3 months in such quarters?

152. What use did you make of such a list?

153. Do charitable institutions furnish lists to you showing the discharge of inmates from such institutions?

154. What use is made of such a list?

155. Are individuals discharged from such institutions reinstated automatically to the registration lists.

156. On what date do you canvass the names on the precinct register?

157. Should you decide during such canvassing to remove an individual alleged to be illegally or fraudulently on the lists, do you give notice to such individual?

395 158. What constitutes illegal registration?

159. What constitutes fraudulent registration?

160. How do you arrive at such determinations?

161. What procedure do you establish to reach your conclusions to remove such individual from the registration list?

162. Since 1955, furnish the names and race of all persons removed in each annual canvass.

163. When white persons present themselves as applicants for registration, do you normally ask them whether they have ever been registered as a voter in your Parish or any other Parish in the State of Louisiana at any previous time?

164. When Negro persons present themselves as applicants for registration, do you normally ask them whether they have ever been registered as a voter in your Parish or any other Parish in the State of Louisiana at any previous time?

165. What are the specific records you maintain in your office?

166. After furnishing the name and a short description of each of the records within your custody, state the title and the name of the individual responsible for the accurate compilation of the information contained in this record.

167. After furnishing the name and a short description of each of the records within your custody, state the title and the name of the individual responsible for the accurate maintaining and preserving the record.

168. Who is responsible for compiling the detailed registration statistics to be filed with the Secretary of State?

169. How often are such statistics furnished to the Secretary of State?

170. Do the statistics contain a breakdown between Negro and white registrants?

171. Are these statistics available for each Parish or each precinct separately?

172. Does the master file you maintain contain anything other than the original registration applications?

173. Is this file retained in your office at all times?

174. Is this file a public record?

175. What is the nature of the precinct register file?

396 176. What is the nature and purpose of the duplicate register file?

177. Who compiles and maintains them?

178. What is the nature and purpose of the closed and disqualified file?

179. Who is responsible for compiling and maintaining it?

180. Is this a public file?

181. Are such files maintained for each precinct or for each Parish?

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182. What records reflect any challenges by qualified voters who have failed to vote for two years of registrants belonging to parties regularly holding primaries?

183. How many individuals have you so challenged in each year since 1955?

184. How many in each year were white and how many in each year were Negro?

185. How many of those challenged were able to satisfy you of their identity and remain registered?

186. How many registrants have you challenged who have failed to vote for four years?

187. How many of these were white and how many were Negro?

188. How many of the registrants challenged were re-instated?

189. How many of those re-instated were white and how many were Negro?

190. Since 1955, have you ever been called upon to consider more than one case of a registered voter whose registration has been challenged, either by yourself or by two registered voters of your Parish, on a single working day?

191. If so, what dates did this occur and what was the total number of challenged registrants appearing before you on each such date?

192. How many of such challenged registrants did you and/or your deputies interview and process on such dates?

193. How many were white and how many were Negro?

194. How many, each white and Negro, were kept on the rolls despite the challenge?

195. How many registered women who have married or re-married have you removed from the registration list?

196. How many were white and how many were Negro?

197. Have you cancelled anyone's registration who has changed his or her name by court order?

397 198. How many were white and how many were Negro?

199. Of the registered women who married or re-married and those who changed their name by court order, how many have you re-registered?

200. How many were unable to become registered voters after having been cancelled for the above reasons?

201. Of this number, how many were white and how many were Negro?

202. Since 1955 has there been any court order issued to you seeking to remove from your custody the public registration and voting records of your office?

203. What was the nature of such order?

204. Did it involve administrative investigation of voting in your Parish?

205. Did it arise as a result of litigation instituted by white persons or Negroes?

206. As a result of the above specified orders, were any registration and voting records removed from your custody?

207. If so, indicate the dates when removed and when returned and in whose custody they were entrusted.

208. During your term of office, have the records ever been out of your custody under any circumstances other than a court order?

209. If so, explain in full detail, giving dates, names of persons to whom entrusted, and place where kept while not in your custody.

210. Are any of the public records of your office out of your custody at the present time?

211. If so, explain fully giving the circumstances, reasons, identification of persons in whose custody they are, and their location.

212. Has there ever been an investigation respecting the performance of your official duties by any State official?

213. Has there ever been an investigation respecting the performance of your official duties by any Federal official?

214. If the answer to either of the above questions is in the affirmative, furnish details and give the dates, the names of the investigating officials, and titles, and the outcome of such investigation.

215. What procedures do you follow to determine whether persons are ineligible to register by reason of desertion or dishonorable discharge from the military services?

216. Do you require both Negro and white applicants for registration to read and/or write one or more provisions of the United States Constitution?

217. By what authority do you so require?

218. Are the written copies of provisions of the Constitution (if used) a part of the official records of the Registrar?

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398 219. What do you do with completed application forms?

220. What do you do with the copies of the Constitution as written by applicants?

221. Where are these papers kept?

222. Who is their custodian?

223. By what authority?

224. Do you keep application forms of both applicants who are issued certificates of registration and those who are refused?

225. (If not.) Under what authority?

226. What rules and regulations promulgated by you or previous Registrars in your Parish are now in effect to aid you in passing upon qualifications of applicants?

227. Where are these rules and regulations kept?

228. Are they a part of the "public records" of your office?

229. Are they now or have they ever been published in any newspaper or place of general notice?

230. (If so.) How frequently is publication repeated?

231. Under what authority are vouchers required?

232. Must a white applicant for registration be accompanied by a voucher or vouchers?

233. Must a Negro applicant for registration be accompanied by a voucher or vouchers?

234. Must a voucher himself be a qualified elector?

235. Is this true both for white and Negro applicants?

236. What records do you maintain concerning vouchers?

237. Is there any limitation on the number of times one person may act as voucher for an applicant?

238. Is there any limitation on the number of applicants for whom one person may vouch?

239. When an applicant is vouched for by a voucher but the applicant is denied registration, does this count as a time of vouching?

240. May a white voucher vouch for a Negro applicant?

399 241. In how many instances have Negro applicants been accompanied and vouched for by white vouchers?

242. May a Negro serve as a voucher for a white applicant?

243. Has that occurred in your period in office?

244. Do you as Registrar of your Parish require that a voucher himself be a qualified elector?

245. Do you examine these persons who appear as vouchers, either orally or in writing?

246. What questions are asked?

247. Is the examination under oath?

248. Do you require that the voucher be personally acquainted with the applicant—both white and Negro?

249. Must the acquaintance be of any particular kind, or for any particular period of time?

250. What procedures do you have for reconsideration of applications?

251. Do you reconsider both rejected and approved applications?

252. What method do you use to notify an applicant that registration has been granted?

253. What method do you use to notify an applicant that registration has been refused?

254. Were there ever any proceedings filed against you as Registrar in the Federal courts?

255. How many of such proceedings were successful against you?

256. In each case, did you subsequently issue a Certificate of Registration?

257. During the period in which you were a resident of your Parish, and in view of the fact of your interest in local government and politics, can you tell us of appeals filed from previous denials of registration by the Registrars in your Parish before you took office?

258. (If so.) How many such appeals were filed in the proper courts?

259. Were there any proceedings filed against predecessor Registrars in the United States Courts?

260. How many of such proceedings were successful against such Registrars?

400 261. Were Certificates of Registration issued at the conclusion of such successful litigation?

262. What practice do you follow when an applicant for registration in your Parish presents a Certificate of Registration from another Parish in the State of Louisiana?

263. Do you follow this procedure as to both white and Negro applicants?

264. What is your practice when an applicant produces proof that he was registered to vote in a State other than Louisiana?

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265. Is this practice followed as to both white and Negro applicants?

266. Do you believe it is proper to deny registration to an applicant in your Parish who has previously been registered in another Parish in Louisiana?

267. Do you believe it is proper to deny registration to an applicant in your Parish who has previously been registered in another State?

268. What reasons would you give therefor?

269. How often must qualified electors in your Parish re-register?

270. Is registration in your Parish permanent?

271. How are the official voting lists kept up to date?

272. Who supplies information as to deaths?

273. Who supplies the information as to disqualification by reason of mental disability?

274. Who supplies the information as to conviction of disqualifying crime?

275. How many disqualifying crimes are listed under the law of Louisiana?

276. When is the work of keeping the official lists up to date done?

277. Who does this work?

278. How many working days in any one year are spent on the work of bringing the lists up to date?

279. Where living persons are to have their names stricken from the official lists, must they be informed of such action?

280. Is this done before or after their names are stricken?

281. How are they notified?

401 282. If any such person believed you were in error about striking his or her name, what could he or she do about it?

283. Have any persons complained to you that their names should not be stricken?

284. How many whites and Negroes have complained?

285. What did you do about such complaints?

286. Were the names of such complaining persons—whites and Negroes—left on the lists or purged?

287. Why, in each instance?

288. Are there any grounds other than death, insanity, idiocy, or conviction of a disqualifying crime, for striking the name of a qualified elector from the official voting lists?

289. What are they?

290. For what reasons, during the period of your service as Registrar of your Parish have the names of qualified electors been stricken?

291. How many whites and how many Negroes from each group?

292. What is the total population of your Parish?

293. How many whites?

294. How many Negroes?

295. How many whites over 21 years of age?

296. How many Negroes over 21 years of age?

297. Do you receive information pertinent to these questions from the Registrars of vital statistics?

298. Do they have any duty to inform you as to deaths, or insanity, of persons over 21 years of age?

299. How many qualified voters in your Parish?

300. How many white persons are presently registered in your Parish?

301. How many Negroes are presently registered in your Parish?

302. How do you account for the fact that Negroes, who make up a substantial portion of the over-21 population, represent so small a proportion of the qualified electors?

303. How many Negroes have tried to register in your Parish in each year since you have been a Registrar?

402 304. How many have been registered?

305. For what reason or reasons have you decided that Negro applicants should be denied registration?

306. What, in your opinion, is the most prevalent reason?

307. Do you normally have more white or more Negro applicants for registration?

308. What reason or reasons would you assign for this?

309. Do you normally have the names of more white persons or more Negroes to consider for purging of the official voting lists?

310. What reason or reasons would you assign for this?

311. Do you believe there is any rational connection between education and the right to vote?

312. Do you believe there is any rational connection between tax-paying and voting?

313. Do you believe there is any rational connection between good behavior and voting?

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314. Do you believe there are any reasons why Negroes should be denied the right to vote which are not equally applicable to white persons?

315. (If so.) What reasons?

403 [Letter dated May 28, 1959, omitted. Printed side page 355 supra.]

406 [Telegram dated May 29, 1959, omitted. Printed side page 358 supra.]

407 [Letter dated June 2, 1959, omitted. Printed side page 360 supra.]

409 [Letter dated June 4, 1959, omitted. Printed side page 362 supra.]

412 In United States District Court, Western District of Louisiana, Shreveport Division

No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7480

J. A. H. SLAWSON, ET AL.

v.

JOHN A. HANNAH, ET AL.

[File Endorsement omitted.]

Transcript of proceedings of August 7, 1959 and filed August 26, 1959

Transcript of proceedings in the above-entitled actions before the Honorable John Minor Wisdom, United States Circuit Judge; the Honorable Ben C. Dawkins, Jr., United States District Judge; and the Honorable Edwin F. Hunter, Jr., United States District Judge, re: constitutionality of the Civil Rights Act of 1957, at Shreveport, Louisiana, on August 7, 1959.

413 *Appearances*

Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, Baton Rouge, Louisiana; George M. Ponder, First Assistant, Attorney General, State of Louisiana, Baton Rouge, Louisiana; of counsel.

Messrs. M. E. Culligan, Sr., 301 Loyola Avenue, New Orleans, Louisiana; John E. Jackson, Jr., 301 Loyola Avenue, New Orleans, Louisiana; William P. Schuler, 301 Loyola Avenue, New Orleans, Louisiana; Albin P. Lassiter, Courthouse, Monroe, Louisiana; N. C. Dalton, 140 St. Louis Street, Baton Rouge, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Lester Hughes, Natchitoches, Louisiana; William N. Shaw, Homer, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Richard Kilbourne,
414 Clinton, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Fred L. Jackson, Homer, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Ferdinand A. Cashio, 1313 Centenary Drive, Shreveport, Louisiana; J. Reuel Boone, Many, Louisiana; France Watts, Franklinton, Louisiana; Cameron C. Minard, Columbia, Louisiana; Ragan D. Madden, Ruston, Louisiana; Edwin L. Blewer, Shreveport, Louisiana; Henry J. Roberts, Jr., 301 Loyola Avenue, New Orleans, Louisiana; Honorable Bruce Bennett, Attorney General, State of Arkansas, Little Rock, Arkansas; for complainants.

Messrs. W. Wilson White, Department of Justice, Washington, D.C.; D. Robert Owen, Department of Justice,
415 Washington, D.C.; T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; for defendants.

Mr. Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

Judge WISDOM. We have one case fixed for today. Will you call the case, please?

The CLERK. Civil Action No. 7479, Mrs. Margaret M. Larche, et als., in their Individual Capacities and as Registrars of Voters in and for their Parishes of the State of Louisiana, versus John A. Hannah, et als., Individually and as members of the Commission on Civil Rights.

Judge WISDOM. Attorneys, are you ready in this case?

Mr. GREMILLION. Yes, Your Honor.

Mr. WHITE. Yes, Your Honor.

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Judge WISDOM. We have had a preliminary discussion of this matter. By agreement of counsel, it has been decided that the restraining order will lapse at the end of this hear-
416 ing, and the Commission, on its part, will not attempt to bring any hearing until a decision is handed down in this case—that is, any hearing in Shreveport.

The attorneys in the case have entered into a written stipulation.

Has that written stipulation been filed, General Gremillion?

Mr. GREMILLION. Yes, Your Honor.

Judge WISDOM. Do you also have a stipulation you wish to enter into the record?

Mr. GREMILLION. At this time, if the Court please, I would like to stipulate between counsel for the Commission, represented by Mr. Wilson White, and counsel for plaintiffs, that the affidavits which were timely filed in this matter pursuant to the rules of the Court be accepted by the Court; and it is further stipulated that should the particular affiants be called, all of them would have testified to the contents of the affidavits submitted and filed in evidence.

Judge WISDOM. Is that correct?

Mr. WHITE. That is correct, sir. I don't know whether it is necessary to specify the affidavits, Mr. Gremillion.

Mr. GREMILLION. The affidavits, as I understand it, I think, there were seven that were timely filed, but this is a class action, and I believe any one of the affidavits would have
417 sufficed. The affidavit would show the chronological history of the facts which led up to the testimony.

Judge WISDOM. Mr. White, have you and Mr. Shaw entered into a stipulation?

Mr. WHITE. We feel, if Your Honor please, if at the luncheon recess we had a little more time, we could get it in better shape.

Judge WISDOM. We really have two cases before us today, and we believe that the legal issues are substantially the same, and perhaps there can be a stipulation as to the second case.

Would you call the second case?

Judge DAWKINS. Civil Action No. 7480, J. A. H. Slawson, et al., versus John A. Hannah, et al.

Judge WISDOM. Mr. Shaw, would you care to make a statement?

Mr. SHAW. May it please the Court, subject to the agreement spoken of by Mr. White that we get together to complete the stipulation, we are ready for argument in the case.

Judge WISDOM. At this time, I would like to state there has been a general agreement, for the allocation of time for the arguments. General Gremillion will present his argument in an hour, divided as he sees fit in the first case. General White will take equal time. Mr. Shaw will have a half hour
418 for the second case, and the Government will have equal time.

We are very happy to have with us today General Bennett from the State of Arkansas.

Mr. GREMILLION. May it please the Court, at this time it gives me great pleasure to introduce the Attorney General of the State of Arkansas, Mr. Bruce Bennett, who has filed, with the permission of this Court, an amicus curiae brief.

Judge WISDOM. We are pleased to have you with us, General Bennett.

If you care to make a short argument, we will be very glad to hear from you.

Mr. GREMILLION. When we had the pre-trial conference, it was my understanding the Commission would agree not to hold a hearing on Louisiana matters, and the Court said, in Shreveport.

Judge WISDOM. The understanding is, that the Commission does agree not to hold a meeting with respect to Louisiana matters at this time, until a decision is handed down in this case.

Mr. WHITE. Yes, sir.

Judge WISDOM. Judge Dawkins suggested that I might call to your attention that we are anxious to have the benefit of such further briefs as you care to file. A period of ten
419 days will be given each side within which to file briefs. Thereafter, we will take some time to consider the matters, so do not expect an immediate decision.

General Gremillion, you carry the burden, I believe.

Mr. GREMILLION. May it please the Court, at this time, I would like to file a memorandum prepared by one of our counsel, Mr. Frank Looney. I would like to file that in triplicate.

Also, I would like to file a memorandum of authorities, prepared by Mr. Scott Wilkinson, of Shreveport, also of counsel,

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and I would like to file a reply brief, which we intend to use in rebuttal.

I would like to file these at this time, and also notify the Court that copies have been served on opposing counsel.

If the Court please, we would like to first thank the Court for its kindness in arranging this hearing, and for its kindness at the pre-trial conference in ironing out matters which will save all the litigants', and I am sure the Court's, time.

At this time, I would like to offer, on behalf of plaintiffs—and I am using the word "plaintiffs", Your Honor, because we are the plaintiff in the action before this Court.

420 I would like to file all the pleadings, the oral stipulations, the affidavits filed, the citation attached to the petition, the temporary restraining order issued by Judge Dawkins on July 12, I believe it was; all of the pre-trial memorandums and exhibits filed by us and all verified copies thereof.

I would like to file in the record, the returns on the writs on the members of the Civil Rights Commission and the various documents which have been attached to the stipulation entered into.

Judge WISDOM. It will be so ordered.

Mr. GREMILLION. If Your Honor please, we have filed a printed brief on the various positions which we assert as to the unconstitutionality of the Act of 1957 itself, and as to the unconstitutional actions and ultra vires resolutions adopted by the Civil Rights Commission.

Argument number one relates to the fact that Act of Congress creating this Commission is an unconstitutional delegation of power. I am not going to dwell too long on these particular matters in my brief because I know the Court has read this brief because we filed it a week ahead of time.

The purpose for raising this question is simply to show this Court that the matters sought here is an unconstitutional delegation of power by the Congress.

421 Under the Fifteenth Amendment, the Congress of the United States can regulate any deprivation of voting as concerns the Federal Government and as concerns the State and State Officials. But, the question of legislation for voter qualifications, or registrations, is strictly one reserved by the State under the benefit of the Tenth Amendment.

We have raised, in this case, the question of the constitutionality of the Act, and the action of the Commission; and we state that this Act is so broad and so inseparable that it is impossible for this Court to pick out that which is constitutional and that which is unconstitutional.

In the case of United States v. Raines, which came, I believe, from the Middle District of Georgia, Section 4 of the Act was declared unconstitutional.

That was the section which authorized the Attorney General to seek injunctions against individuals and the Court very properly held that an individual could not be deprived of a voting right by an individual.

That was also upheld by the Supreme Court in the case of United States v. Rice, where it said: "Where a statute is enacted in general terms sufficiently broad to apply to wrongful acts, outside as well as within, the constitutional juris-
422 diction of Congress, such a statute cannot be limited by judicial construction so as to make it operate only on that which Congress might rightfully prohibit."

Judge WISDOM. Is it your position that this delegation is under the Fifteenth Amendment only?

Mr. GREMILLION. Yes, Your Honor, and subject to the limitations provided by the Tenth Amendment of the Constitution.

Judge WISDOM. The point of my question addresses itself to the authority of Congress to enact legislation dealing with Federal elections, or elections concerning Federal officers under Article 1. You are familiar with the Classic case, in which the Court distinguished between the Fourteenth and Fifteenth Amendments which relate to State action and other authority from the Constitution which might relate to private action.

You take the position this Commission derives all its authority from the Fifteenth Amendment?

Mr. GREMILLION. Yes. The only source of power that the Federal Government has to pass on legislation dealing with the right to vote is that contained in the Fifteenth Amendment which authorized Congress to prohibit, or punish, purely individual private action depriving another of his right to vote on account of his race or color.

423 Therefore, any legislation—I know, the opponents are going to say they are a fact-finding body, but, as such, they would be finding facts, that would be interpreting

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legal rights; because the right to vote is a legal right and any facts they might find under the terms of the Act would have to be reported to Congress for the sole purpose of legislation which would determine voter qualifications and voter registrations which is a matter reserved, exclusively, to the States.

Judge DAWKINS. What Judge Wisdom is driving at is, does the equal protection clause of the Fourteenth Amendment come into play in matters of this kind?

Mr. GREMILLION. No, I do not think it does.

Judge WISDOM. The question that is disturbing me in this case is this: the constitution provides, as you know, in Article 1, that the people choose Congressional representative. It was held in the Classic case that the right to choose representatives included the right of persons to vote in elections respecting Federal officers.

Does the right of the people to vote in Federal elections permit a private individual to prevent, intimidate, coerce a private person—or allow a private person—to interfere with voting in the election of Federal officers?

424 In other words, the equal protection and due process clause of the Fourteenth Amendment and the prohibition against discrimination in the Fifteenth Amendment may not, necessarily, be the power or the authority for this delegation to the Commission.

Congress, as was held in the Classic case, does have the right to legislate with respect to elections affecting Federal officers, and to prevent private action which interferes with a voter voting in such election.

Mr. GREMILLION. Of course, the answer to that comes back to the concept of our Government. The rights of the Federal Government, as Your Honor well knows, are derived from the rights that the State gave to it. The Fifteenth Amendment never was intended, and I don't think I have ever included any question of due process of law that might be exercised under the Fourteenth Amendment, and I don't think there is any conflict there.

Judge WISDOM. I think you may be right there. I don't want to argue this point, but it is a question that is disturbing me. I think, unquestionably, the Fourteenth and Fifteenth Amendments prohibit State action and not private action, but I am not at all sure that the Constitution did not, as a whole, and particularly Article 1, does not allow the Congress to pass

laws that will make effective the right to vote in Federal elections.

425 In other words, if Article 1 gives the people the right to choose Congressional representatives, then to make that right effective, Congress has the power to pass any laws that are necessary.

As you know, under Section 8, Congress does have the right to pass any laws that are necessary and proper to enforce the previous rights referred to.

Mr. GREMILLION. I don't think you can read in one section of the Constitution to another unless it applies.

The most recent case on that matter was the Raines case which held that by virtue of the Fifteenth Amendment, Congress did not have the authority to investigate possible deprivation of the right to vote and have that vote counted other than under the color of law. Therefore, Congress exceeded its authority, under the Fifteenth Amendment, and it illegally invaded an area which was reserved to the State under the Tenth Amendment of the Constitution.

That was borne out by the Raines case, and the latest expression of the United States Supreme Court is that of Greene v. McElroy.

Judge HUNTER. Of course, the Classic case, which Judge Wisdom referred to, involved a criminal prosecution under a Federal statute, where, in Louisiana, at a Congressional election, down in South Louisiana, fifteen votes were cast for "A", but they were counted for "B".

426 That, Judge Wisdom says, comes under Article 1, Section 2 of the Constitution, which says that an elector that is qualified to vote in the State election is qualified to vote in Federal elections.

As I understand from reading the brief of the Government, they rely totally on the Fifteenth Amendment.

Mr. GREMILLION. That is correct. I might add, the Classic case was a criminal statute and it was passed, based on Article 1 of Section 4, which has no application to Section 15, and that, of course, applies only to elections.

As far as Louisiana laws are concerned, any individual has ample protection, because we have criminal statutes under which a person can be prosecuted. That is exactly what was done, and those people were punished under laws specifically reserved to the State.

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Judge HUNTER. I understand from what I read in the paper, that you made the statement Louisiana has nothing to hide. The registrars have nothing to hide. All you want is for them to testify when they are given constitutional rights. Then, why do you attack the constitutionality of the statute? Why don't you limit your attack to the parts thereof which you think deny to Louisiana citizens their rights?

Mr. GREMILLION. I have maintained that in this Court and I maintain it now. We have no objection to any
427 legal constitutional conduct of an inquiry into the alleged deprivation of voting, but we say Congress has no authority to invade State's rights in this particular matter. We say Congress has no right to adopt an investigative measure which invades, at least, eight or ten basic constitutional guarantees afforded, not only to citizens of Louisiana, but citizens everywhere.

Judge HUNTER. You don't mind being investigated, but you want to be investigated constitutionally?

Mr. GREMILLION. Correct. We have no assurance that under the present statute, the constitutional rights of these individuals would be allowed, so we have to attack the statute as a whole.

Let me say that much will probably be made by the defense that they are exempt from the administrative procedure act.

I would like to point out Judge Dawkins', in a very well reasoned opinion which we thoroughly agree with, while I am cognizant of the fact his Honor reserved the right to change his mind at a later date, our argument is based primarily on the fact that his reasons were correct and they are accurate findings of law. He did not go into the constitutionality of the matter.

We are going to make a strenuous effort to show that
428 his findings in the matter and the issuance of the temporary restraining order was well reasoned, both in law and in fact.

Judge WISDOM. General Gremillion, assuming the Act applies, would all the safeguards in that Act, necessarily apply to purely a dispitory hearing?

Mr. GREMILLION. Yes.

Judge WISDOM. Why?

Mr. GREMILLION. Because this particular commission investigates and reports to Congress. It reports suggested legis-

lation to Congress. It adjudicates. It determines the credibility and pertinency of evidence.

Judge WISDOM. Let me say this: It does not adjudicate in any sense that any of the regulatory commissions, or agencies, adjudicate. For example, when the Federal Power Commission has a hearing on a complaint, or the Interstate Commerce Commission has a hearing on a complaint, it is in the nature of a trial. This is a pure investigation, which I take it, is the hearing contemplated in this case and contemplated in the statute.

Is such a hearing analogous to, or similar, in any way to the adjudications of the other regulatory agencies?

Mr. GREMILLION. Yes, Your Honor.

Judge WISDOM. Tell me why. That is a serious question.

429 Mr. GREMILLION. Because it was found in Judge Dawkins' temporary restraining order this was an agency of the Executive branch of the United States.

Judge WISDOM. There is no question about that.

Mr. GREMILLION. Then, it being an agency of the United States, it would have to be subject to the regulations of the Administrative Procedure Act, unless Congress expressly eliminated it therefrom, as provided by the Administrative Act itself. Congress could have said, as it did in the Marcello case, we don't have to use the exact same language in order to relieve it from the Administrative Act. It has to use that language which gives the witness the right to defend himself, the right to cross examination, the right to submit evidence, and the right to counsel and all the traditional safeguards and guarantees which we are entitled to in the United States.

Judge WISDOM. In the Marcello case, there was a ruling that Marcello should be deported.

There are some other rulings that adjudicate a controversy and fix rights.

This is purely an investigation into facts.

I think there is merit to your point, and I am simply telling you the questions uppermost in my mind.

430 Judge DAWKINS. That is one of the points I want you to be certain to answer in your briefs. I am like Judge Wisdom in this sense: on the question of adjudication, does not that word necessarily connotate the passing upon

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rights—the fixing of rights, or a penalty or something of that sort, rather than simply finding facts?

Of course, you go on to argue and I took note of that in my original opinion, inferentially, at least, what you want is a fair finding of fact and not a one-sided finding of fact, because whatever is recommended to the Congress, that is reported as a fact by the Commission, Congress might well use it as a subject of legislation which could effect the rights of Louisiana citizens, and that's why you are concerned about it.

In addition, there were these ideas of fair play, which you say are absent in the Commission's rulings and in the statute.

Mr. GREMILLION. That is correct.

Judge DAWKINS. I do want you to answer on the applicability of the Administrative Procedure Act wherein these authorities Mr. White cited in his brief, pointing out it must be an adjudication, per se, and not indirectly.

Judge WISDOM. If I may make a point that to me is important: it seems to me, you would be on sounder ground if you threw the Administrative Procedure Act overboard and
431 say whether or not this Commission comes under that Act still in an investigation, and since you are investigated, you should have the right to cross examine.

That is a question I would like Government counsel to answer.

Mr. GREMILLION. I will say this: as far as I am concerned, the Civil Rights Commission can go on either side of the fence. It can belong to the Administrative Procedure Act or it can go the other way.

If the Administrative Procedure Act applies—and let me point out to the Court that there are only two examples, that is, military tribunals and internal security regulations, and the Supreme Court in the Greene case went further than that by saying that even though the internal security regulations were exempt from the Administrative Procedure Act—even though that particular statute was exempt in the Greene case, it said Courts had to protect the traditional safeguards of our Constitution, namely, the right to cross examine and to be faced with your accuser and to know the nature of the accusations.

Suppose they are not under the Administrative Procedure Act, then Congress did not expressly express this Act, regardless if it is an investigation or finding of fact agency. Congress certainly has the power to legislate. We have no argument with that.

432 Congress delegated this authority, and here we talk about fair play, which Your Honor mentioned. We have nothing to hide. We have consistently called upon them to give us our traditional safeguards and they have refused to do so.

Let me say this: in Section 1011 on page 14 of the reply memorandum I submitted, it says: "No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so expressly."

We contend the Administrative Procedure Act is applicable, but to answer the argument on the other side of the fence, Your Honor, you can read the Civil Rights Act time and time again and you will note there is no provision in there for cross examination. You will notice there is no provision in there for the production of witnesses unless the Commission itself decides to do so. There is no provision in there that will protect an individual against a defamation of his character. You will notice there are no provisions in there which authorize the Commission to adjudicate its findings.

In other words, this Commission, as a fact-finding body, could determine certain facts and it, itself, would then be in a position as to whether it wants to report them to Congress, or not.

433 Judge HUNTER. Mr. Gremillion, couldn't it best determine what the facts are by permitting cross examination and thus revealing the entire picture rather than one side?

Mr. GREMILLION. That is exactly what we are contending.

Suppose a witness is placed on the stand and they ask him a certain question and he may not care to answer it? His only remedy then would be to say, "I desire to invoke the Fifth Amendment."

Your Honor knows the position the public takes when someone invokes the Fifth Amendment. We all know what taking the Fifth Amendment means in the eyes of the public.

He can have an attorney, but his attorney can say, "You take the Fifth, or answer." That is the only thing an attorney can do in representing a client in a hearing.

It may be the Commission is attempting to determine facts, but when it is doing it in that particular manner it is violating every provision of the Constitution and the traditional safeguards guaranteed our citizens by the Constitution.

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Judge HUNTER. Relative to the application of the Administrative Procedure Act, I think the reports of the Committee show that both Congressman Celler, who is Chairman
434 of the Committee, and Congressman Keating, who is a member of the Committee, stated this Commission was to be ruled as a Congressional Commission, and Senator Talmadge said that looks like what it was going to do.

They seem to me to have meant to give this Commission the same rights they have.

As to what rights they have and what rights they can delegate, I think those are serious questions.

Mr. GEMILLION. I can only repeat what I have been saying all along.

Your Honor really is not asking a question, but making a statement.

We contend in argument No. 1, in our brief, that they have no authority to delegate in this particular manner.

Judge WISDOM. Is your argument they have no authority to delegate at all to a commission?

Mr. GREMILLION. No, I don't mean that. Congress has no authority to delegate voter qualification or registration laws because that is the province of the State.

Judge WISDOM. Where does it say that?

Mr. GREMILLION. In the Tenth and Fifteenth Amendment.

Judge WISDOM. No, I mean, there is, in the Civil
435 Rights statute, a section which says Congress shall delegate the right to investigate voter qualifications. Not the determination of the qualifications, but whether or not there is discrimination in applying those qualifications.

Mr. GREMILLION. Discrimination is not qualification—deprivation of the right.

Judge WISDOM. It amounts to the same thing.

Mr. GREMILLION. Who could deprive an individual of his right to vote? No one but the registrar.

The registrar looks at the card, and he determines whether the card is filled out correctly and determines whether the individual is qualified to vote. That registrar is in possession of the card until the election. Therefore, the fact-findings of this particular Commission are adjudicatory, because the only individuals that could deprive the individual of the right to vote would be the registrar, and in the stipulation, which was introduced, it shows that this Commission received 67 com-

plaints charging these registrars deprived certain individuals of the right to vote. Therefore, we have a real right here. We have a question of a constitutional right and that the registrars are entitled to constitutional safeguards in making these determinations, and in that respect, this Commission certainly investigates and adjudicates a report.

Judge WISDOM. Does this Commission make a de-
436 termination?

Mr. GREMILLION. It makes a report to both Congress and the President. What the purpose of that is, I do not know; but, this Commission, or Committee, is not a Congressional committee.

May I point out that by the Government's own motion and brief, it shows it is an instrument of the Government, which is an Executive branch. Therefore, it does not come under the Administrative Procedure Act.

Judge DAWKINS. In answer to Judge Wisdom's question a moment ago, I might make this observation expressly delegated to the Commission by the Act: Is it determination of the right to vote having been abrogated? To that extent, it is a fact-finding body.

Mr. GREMILLION. Let me point out to the Court, again, that during the course of any proposed hearing the vitally, basic rights: the Government is going to holler they are not being accused. The only person who can deprive another person of the right to vote is the registrar. They were subpoenaed to testify and have not been afforded their rights under the Constitution. Therefore, it is an accusation.

Judge HUNTER. I say this in the way of a statement and I am giving my own thoughts, which I think are
437 probably the thoughts of the Court: the Fifteenth Amendment, of course, as I see it, is the constitutional authority for the creation of the Commission. The power of the Commission is to investigate allegations in writing, etc., that citizens have been deprived of their right to vote by reason of their color, race or religion. That is specifically within the meaning of the Fifteenth Amendment, and it seems to me, there is no encroachment here—I am not talking about the procedure—but as far as the creation of the Commission is concerned, it seems to me, Congress was doing just what it had the right to do under the Fifteenth Amendment. To investigate—not their rules.

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Judge DAWKINS. That is what Judge Johnson held in re: Wallace..

Judge HUNTER. You were saying they were investigating voting rights—voting rights have been deprived people by reason of their color, in Section 1975(C).

Mr. GREMILLION. The Raines case held it was not limited to State action.

Judge WISDOM. That is a question I would like you to make clear for me, to clarify my thinking on it.

I have no doubt the Fourteenth and Fifteenth Amendments apply only to State action.

Suppose that the Act, in terms, stated it derived its
438 power only from the Fourteenth and Fifteenth Amendments and it was only interested in investigating State action. You would not be here today, would you?

Mr. GREMILLION. No, sir.

Judge WISDOM. Really, the case gets down to this: does Congress have the right to create a Commission to investigate private action? Isn't that what the case gets down to?

Mr. GREMILLION. Yes, I think so.

Wait just a minute——

Judge WISDOM. I am not saying there aren't other questions. That is the key question. I say, isn't the question in the case whether Congress has the right to create a commission to investigate private action that deprives voters of the opportunity to vote in elections?

Mr. GREMILLION. That is one of our contentions covered by Argument 1 and 2.

Judge HUNTER. That is the Raines case?

Mr. GREMILLION. That is correct.

Judge WISDOM. The question which I want you to think about when you write your brief, and perhaps, in rebuttal, is simply this: Section 2 of Article I gives the people of this country the right to choose its Congressmen. Doesn't this necessarily carry with it the right to make that choice effective, especially in view of Section 1 of Article VIII, which authorizes the Constitution to make the laws necessary
439 and proper for carrying into execution that power? In other words, the question that worries me is not whether they have a right to investigate State action under the Fifteenth Amendment, but whether they have a right to investigate private action under Article I.

Are the hands of Congress tied when private individuals interfere with voters going to vote in a Federal election?

Mr. GREMILLION. We will cover that particular point in our memorandum.

Judge DAWKINS. Also cover the point whether some of these registrars are the State, or whether they are private individuals.

Judge WISDOM. If the qualifications are not discriminatory, it is solely for the State to decide. We all recognize that.

We have interrupted you a great deal, and I think you are entitled to make a coherent argument without too many questions from me.

Judge HUNTER. And me, too. I apologize.

Judge WISDOM. It is an important case, and I think it necessary to clarify the thinking of it.

With the approval of my brothers, I will give you a few minutes of uninterrupted argument.

Mr. GREMILLION. May it please the Court, I wel-
440 come cross examination. I think I have covered enough about the unconstitutionality of the Act and the various sections. We also covered that in our brief.

I would like to come to the third portion of our argument which states that the rules and regulations and policies of the Commission are based upon no legal authority and are unlawful and unconstitutional because they deny the complainants a right to a full, fair and impartial hearing under the law.

I think the Court agrees the Commission is an Executive agency, at least, temporarily, of the Federal Government. The Commission is vested with judicial function and it is a quasi-judicial body. It performs as such in its hearings. It develops facts. It studies denial of the equal protection of the laws, and it appraises law and policies. Therefore, it must adjudicate to make the varied determinations of authority that Congress gave to it.

As I mentioned previously, it also adjudicates, by its rulings upon the admissibility of evidence at its hearings; by its determination of what is and what is not the truth; by its determination of evidence as to whether such is defamatory or degrading or incriminating; by its rulings on whether or not requests of parties for witnesses will be granted; by its determination and sole judge of the pertinency of testimony and
441 evidence adduced at its hearings, and by judging the

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conduct of counsel and punishing breaches thereof. The Supreme Court in the Wong Yang Sun case v. McGrath said that any act that violated the traditional rights of individuals by adjudicating on particular matters such as these was subject to the Administrative Procedure Act.

Judge WISDOM. What agency was involved in that case?

Mr. GREMILLION. I think it was the Immigration and Naturalization Service, and then they rewrote the law, and that is when they put in the exceptions in this manner: that they allowed cross examination; they allowed representation by counsel and they gave them all the safeguards they were entitled to; and that is when the Marcello case came along and he contended they didn't do it, and the Supreme Court said you don't have to have magical words, as long as the safeguards are given.

Judge WISDOM. Did that come up on an action by the Government to deport?

Mr. GREMILLION. Yes, and he contested it in the Courts.

The Government picks out one particular excerpt. The whole finding of the case is that this particular agency had given the safeguards we claim are not given here and which are provided for by the Administrative Procedure Act.

442 That's why we say this particular Act is unconstitutional, because it varied those traditional rights, and the Supreme Court, in the Greene case, if Your Honor please, said just recently that those rights had to be protected, even though in the Greene case it was part of the security program.

Judge WISDOM. Are you familiar with the proceedings in a deportation case?

Mr. GREMILLION. Generally. I have never handled such a case.

Judge WISDOM. You know there is an adjudication by a trial examiner and a right of appeal. There is everything analogous to a trial of a case, except at a preliminary deportation proceeding, there is no right of appeal to a court.

Mr. GREMILLION. That is the very point we are making. When the Supreme Court declared unconstitutional these immigration laws, this new Act covered those particular points declared unconstitutional in the Wong Yang Sun case.

That's why the Court found, in the Marcello case, that Congress had given the safeguards.

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Let me say this: As far as your immigration cases are concerned, let us not forget that when they get ready to deport someone, he is not a citizen of the United States, and here we are talking about the rights of citizens of the United
443 States that are effected by the passage of the Civil Rights Act. While the law on that point is conclusive on this matter, yet, the right to citizens is what we are seeking to protect here by the filing of this particular petition.

Judge DAWKINS. Suppose you cover this point, which I believe, point 3 or 4 of your brief covers: even assuming the statute is constitutional on its face, assuming that the Administrative Procedure Act is inapplicable, what do you claim your rights are that are being violated by the rules of the Commission—what it proposes to do or not to do? I believe that is really the heart of the case, any way you look at it.

Mr. GREMILLION. Has this Act in question violated any of the provisions of Amendments Five, Six and Nine?

We say, by virtue of Section 102(A), the Complainants are not notified of the nature of the hearing and they would not be notified until the day of the hearing, and at that time it would be too late to prepare any defense and it would be too late to subpoena witnesses to deal with the nature of that hearing in defense of the witnesses so called.

Again, if you look at this matter this way: when a witness is subpoenaed before the Civil Rights Commission, he comes as a two-pronged animal. He comes as a witness and
444 he comes as one being accused, because, as I said previously, the only persons that could possibly deprive an individual of his right to vote would be the registrars, and in this particular case—I want to make this observation to the Court—in this particular case and this is shown in our stipulation, seventeen registrars of voters were subpoenaed in this particular case, and in the other case seven were subpoenaed. This is all in the stipulation.

The Commission subpoenaed some forty other witnesses.

Judge WISDOM. If the registrars are the only ones who can deprive them of their right to vote, isn't it State action?

Mr. GREMILLION. No, sir. Can't they be punished by the Federal Government?

Judge WISDOM. It goes far beyond the question of the registrars, and it concerns the question of whether private individuals may be deprived.

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Mr. GREMILLION. That is entirely possible under the Act, and that is one reason why we say it is unconstitutional.

Judge WISDOM. I would like to hear the answer to Judge Dawkins' question with respect to the particular rights.

445 Mr. GREMILLION. I am coming to that. I was trying to show the Court that here was a situation that was most unusual. I know of no other commission that has ever been created by Congress which has the right of this commission.

Dean Storey said something about the Hoover Commission in his argument, but the Hoover Commission was created to save money. I know of no other commission which has this authority.

A Congressional Committee is entirely different from this. I do think a committee of Congress would have the right, because Congress has that authority.

Judge WISDOM. Can an agent do what a principal can do? Can the principal delegate to an agent?

Mr. GREMILLION. Not when the principal restricts by enactment of legislation that the agent will act accordingly when that particular legislation is unconstitutional on its face because it denies the right of cross examination. It denies the knowledge of your complainants and the nature of your accusations.

We have repeatedly told this Commission we will cooperate. Give us the names of our accusers and we will cooperate with you, because we are just as much interested in the deprivation of voting rights as you are, and if any registrar deprives

446 anyone of the right to vote, I will commend that they be discharged. How fairer can we operate?

I don't think a Congressional committee can deny anyone his basic constitutional right.

Judge HUNTER. If this was a Congressional Committee, do you think it would be depriving you of your rights?

I am reading from a book entitled "Grand Inquest" written by Telford Taylor. Professor Frankfurter, according to page 244 of this book says: "If cross examination is no longer regarded as an essential decency, still those circumstances of past years explain why little attention was paid to committee procedures until recently. And for the same reasons, it is natural, that, over the course of years, the Courts have come to assume

that committees are entitled to determine their own procedures."

Mr. GREMILLION. I understand your question. I agree with the long line of cases set down, and these registrars got just as much rights as other citizens of this State. They have just as much rights as the ghost complainants.

We have stipulated they have the complaints but we
447 still don't know the nature of the complaints and the nature of the accusations.

We are actually a defendant in a proposed investigation in which we are going to be faced by ghost complainants. We are fighting blind accusations.

Judge WISDOM. Do the regulations of the Commission prohibit cross examination?

Judge DAWKINS. Inferentially.

Mr. GREMILLION. It says witnesses may be accompanied by their own counsel.

Judge DAWKINS. Let me read this: "Interrogation of witnesses shall be conducted only by members of the Commission or by authorized staff personnel."

I think that clearly rules out cross examination.

Mr. GREMILLION. This is page 50 of my brief, if the Court please, and I think this answers your inquiry. I am going to read from it because I think it is so accurate: "Defendants have no authority whatsoever in their attempt to hold a hearing at which complainants are adverse parties pursuant to policies, rules and regulations unfounded in law or equity and contrary to express law and our jurisprudence.

"Defendants have denied complainants' rights:"; and I will say that we have requested the Commission—the
448 cooperation of the Commission in these matters, and the Commission has refused, and that is the reason why we are suffering irreparable damage—not in the future, but now.

The complainants have been denied the right:

"1. To be advised of the specific scope of matter and question under inquiry insofar as complainants are concerned,

"2. To be advised of their accusers and have access to the accusations and other evidence against them,

"3. To be confronted by their accusers and cross-examine their accusers."

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Let me digress a little bit: the Commission says they might put a witness on the stand, but that doesn't mean they will put him on the stand. If any registrars' constitutional rights would be violated, such as defamation, there is no procedure whereby you can bring in other evidence, or bring in other witnesses to contradict that particular matter.

May I digress once more: there were 67 complaints. There were 17 registrars and 7 other people in the other suit, which is 24. All of those were subpoenaed by the Marshal. Forty were subpoenaed by the Commission itself. The whole de-
449 sign of that was to keep the names of the witnesses secret, violating the constitutional rights of these people by the very action of the Commission in the subpoenaing of the witnesses that they never intended to let us know the names of the people who would testify, or even the nature of what they were going to testify about. So, how can anyone prepare a defense to such techniques and high-handed procedure?

Judge WISDOM. One final question: will they have all these rights guaranteed any defendant if this case goes to trial? Actually, could not the registrars in this case ignore the subpoenas and then they would be tried for contempt, at which time they would have all the rights that you have referred to—the right of cross examination, and so on?

In what way will they suffer even though they have those rights on the trial of the case?

Judge DAWKINS. In the contempt proceeding, the only question before the Court would be whether or not they were contemptuous. You would not try the question of defamation.

Mr. GREMILLION. You are exactly correct, Judge Dawkins. There is nothing in this Act which gives them any legal redress. The only time the Court is allowed to come into this matter has been knocked as unconstitutional in the Raines case.
450 The section provides that if a witness refuses to honor the subpoena, the Attorney General of the United States may be called upon to ask the Court to command that witness appear and bring his records to the Commission or its designated agent—not in Court—and when that happens, you are right back where you started from, except the Court ordered you to bring your records to Timbuktu, or some other place.

Judge DAWKINS. Shreveport.

Mr. GREMILLION. The Wallace case is not determinative of any issues here. The Wallace case was supported by stipula-

tion of counsel which allowed the Commission to go to the various county seats and look at the particular records.

I want to emphasize this, because it is important: the Court can only order the records produced and the registrar to appear before the Commission or a designated agent. When you do that you are right back to the same rules and the same regulations and the same violation of constitutional right, except the Court of Justice participated in it, and I don't think the law or the justice of this country will prohibit the use of the Courts in such violation of constitutional techniques.

Judge DAWKINS. Let me ask this question? It might more properly be addressed to Mr. White, but let us assume
451 that any of the registrar plaintiffs, or individual plaintiffs, had refused to appear before the Commission and the Attorney General, upon request of the Commisison, applied to this Court for an order requiring their attendance, which is, I believe, up to that point, expressly in keeping with the statute, would this Court, upon such application have the right—the power—to order their appearance before the Commission conditioned upon their being given the right to know in advance the nature of the charges against them, to confront the witnesses against them and cross examine those witnesses?

Mr. GREMILLION. I don't think this Court could legislate. I don't believe you would have the authority. The only way those guarantees would be allowed, would be to have this case brought in to Court.

Judge DAWKINS. Instead of issuing a blanket order, the Court would condition its order.

Mr. GREMILLION. It could be doing violence to what Congress said in the particular Act.

Judge DAWKINS. Is it your point that such an order of the Court would be contrary to those sections of the Act which provide counsel may be present only to advise his clients, and so forth?

Mr. GREMILLION. My answer to that would be, where would the Court have such authority? There would be no adversary proceeding before it.

452 Let me say this: Your Honor, Judge Dawkins, discussed the question of a competent court. Certainly, this Court is a competent court in the execution of legal mandates and orders.

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Louisiana law, as we all well know, provides the registrar is subject to dismissal if he removes the records from his parish seat, and the only time he is excused is by an order of a competent court, but that law says they shall be brought to court.

The authority of the Attorney General of the United States says he has got to come to Court to order you—and this Court would have to order this registrar to take his records to some other place for an indeterminate length of time to let indeterminate individuals examine them.

Judge WISDOM. The Wallace case is material on that point, because the Wallace case is where the court allowed the records to be examined at their location in the registrar's office.

Mr. GREMILLION. And that was done by a stipulation. Alabama might not have such a law as Louisiana. They are honorable and honest, law abiding citizens just as much as anybody else.

I can assure you that the registrars were going to
453 refuse to testify if this hearing was held and a temporary restraining order refused. We were prepared, if such happened, to resist and to file a motion to quash in which we would raise the same constitutional questions and defenses that we have raised here.

Judge DAWKINS. That would be the long way around.

Judge WISDOM. We are all in agreement on that.

You will have full time for a rebuttal, and now we will hear from General White. We will take a fifteen minute recess.

(Short recess.)

Judge WISDOM. General Bennett, would you care to make your argument at this point, or after the Government argues?

Mr. BENNETT. Afterward, sir.

Judge WISDOM. General White?

Before you begin, there is one question that troubles me a good deal, and I would like to have the answer to it or at least consider it in your argument and in your supplemental brief:

Suppose that this Court were to find that the rules and procedures, as set up by the Civil Rights Commission, deprived the registrars in this case of cross examination and confronta-
tion, particularly, would that necessarily strike down
454 the Civil Rights statute as unconstitutional; and I would also like General Gremillion to give some consideration to that question, too.

Mr. WHITE. May I defer answering that until a little later in my argument?

Judge WISDOM. All right. I don't think you need answer it now if you think it will interfere with the course of your argument, but I want an answer during this argument, and you may elaborate more on it in your brief.

Mr. WHITE. As I understand Your Honor's question, should you find the procedure constitutionally deficient, would that ipso facto declare unconstitutional the Commission insofar as its power to hold hearings?

Judge WISDOM. I mean, of course, the regulations the Commissions adopted.

I do not mean the procedure, as set out in the statute, unless they are so connected that they cannot be separated.

Mr. WHITE. That is the point I am coming to, Your Honor. I feel the Commission's procedures are inseparably tied in and related with the procedures that Congress prescribed, so that in effect, should the court find these procedures unconstitutional, I think they would be finding Congress, itself, had been deficient in providing sufficient safeguards.

455 We would like to consider that more in length in our brief.

Judge HUNTER. Do you base that on the statements by Senator Talmadge and Mr. Celler and Congressman Keating?

Mr. WHITE. In part, but more by reason by the fact that the Commissions' rules, with one exception, are the statutory rules laid down in this Act itself.

Judge WISDOM. Are all the rules and regulations in the record?

Mr. WHITE. Yes, sir. They are stipulated.

Judge HUNTER. As I understand it, sir, Congress did say they could have a lawyer and that lawyer could advise you as to your constitutional rights.

Mr. WHITE. That section, Your Honor, touches on paragraph (C) and it reads this way: "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights."

Judge DAWKINS. You say that, inferentially, rules out cross examination?

Mr. WHITE. Yes, sir.

Judge DAWKINS. Does it also rule out direct examination of witnesses for these plaintiffs?

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456 Mr. WHITE. In neither case does it rule out either a kind or cross examination or direct examination of witnesses called on behalf of plaintiffs, in the position of plaintiffs.

Your Honors are aware of the Congressional rule that questioning is conducted solely by members or the authorized staff. That, of course, is the Commission rule.

Your Honors will also take judicial notice of the practice of the Commission to accept questions handed up generally by counsel for a witness or for some interested party, if they see fit to give those questions to the witness.

I may state, or have the authority to state, that the Commission has followed that practice in at least two hearings, the transcript of which are not yet made public.

That practice of the indirect course is spelled out. In some it is not.

For example, I have before me the rules of the Internal Subcommittee of the Judiciary Committee. I think it is almost a pattern for the rules of the Commission.

Judge HUNTER. Another point: there is nothing in the Congressional Act that states one way or the other as to whether or not statements against certain people must
457 be given to those certain people?

Mr. WHITE. Ex parte statements?

Judge HUNTER. The statements you get from some of these people who claim registrars discriminated against them. The Commission denied giving the statements?

Mr. WHITE. That's right.

Judge HUNTER. What is there in the Congressional statute that gives the Commission the right to deny the people as to the accusations against them?

Mr. WHITE. The Act is completely silent either way.

Judge HUNTER. Do you think you can imply Congress wanted to give this power to the Commission?

Mr. WHITE. The power to protect the source of information?

Judge HUNTER. Yes.

Mr. WHITE. I don't think there is any question they had it, by virtue of the kind of Commission they are.

Judge DAWKINS. In that respect, Mr. White, you weren't here, but I am sure you have learned that in the course of the argument and hearing for the restraining order, I believe it was Mr. Tiffany, the Staff Director of the Commission, who stated that the reason the Commission refused to give

the source of information was for fear of economic
458 reprisal.

Without commenting on that one way or the other offhand and indicating no final conclusion one way or the other in this matter, it would seem to me that in so protecting these sources of information, what this Court would have to decide would be whether that policy is paramount or whether the rights of these complainants in this case, to know who accuses them, what the nature of the accusation is—to confront their accusers and to cross examine duress those accusers; whether to deny those claimed rights by these complainants would be committing another violation of their civil rights.

In other words, would it be sanctioning a wrong in order to prevent a wrong?

It seems to me, the case narrows down somewhat to that point, insofar as the rules are concerned.

Mr. WHITE. May I point out that in the stipulation filed today there is an additional, and perhaps, more compelling reason shown by the stipulation for non-disclosure. Now, disclosure was requested by counsel so that the complainants might be prosecuted for perjury for having alleged there had been deprivation of their vote. That is in the record, and actually attached to the stipulation.

Judge DAWKINS. That is not a complete answer to
459 my question.

Mr. WHITE. No, sir. I wanted to amplify the reasons for protection.

Judge HUNTER. You don't mean to say if that had not existed, you would have given copies of these statements?

Mr. WHITE. No, but I think to pose the question properly, we should see all of the balance on the one side, in favor of protection, before we strike the balance.

I would like, if I may, go directly into this whole question.

Judge DAWKINS. In answer to Judge Wisdom's question that you definitely say the rules and the statute are inextricably connected and to strike down the rules would be to strike down the statute——

Mr. WHITE. I think the Court would agree to that.

Judge WISDOM. Should you reach an opposite conclusion after study and in preparing your supplemental brief.

Judge DAWKINS. What we are getting at, Mr. White, is the well-known rule that wherever possible the court will avoid

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a decision upon the constitutionality of a statute if it can decide the case otherwise.

460 Mr. WHITE. On that point, my present thinking is that should these more basic rights which have been discussed, should the Court decide that their denial was unconstitutional, we would say that is a denial by Congress rather than an administrative act of the Commission.

We would like to study and brief that point.

Judge DAWKINS. Judge Wisdom says I, for one, will not hold you to that, if you change your mind.

Judge HUNTER. Neither will I.

Do you think that this Commission has the same powers that a Congressional investigative committee would have if it were down here, instead of the Commission?

Mr. WHITE. Substantially the same.

Judge HUNTER. Do you agree with Congressman Thomas, in 1948, when he is alleged to have said that we will determine what rights you have and what rights you have not got before this Committee?

Mr. WHITE. No. There is one difference: the Committee, I suppose, felt it had the power to disregard the rules such as they were. This Commission, of course, does not have that. But, there is this, Judge Hunter, that the Commission's rules are definitely dictated by the Congress, whereas the Congressional Committee might feel more free to say that is the rule but we are not going to apply it.

Judge HUNTER. You can understand there is a
461 natural reluctance on the part of courts to interfere with the legislative branch.

Judge DAWKINS. That is not necessarily true in reverse.

Mr. WHITE. May I say this: whenever the court interrupts, I much prefer to answer questions rather than to proceed without interruption.

I would like to address myself right now to this question: I think it was Judge Wisdom who first interposed the question that assuming the Act is constitutional and assuming the administrative practice act has no application, what are the constitutional provisions that apply to a commission—investigative commission of this kind, extra judicium any such law as the Administrative Procedure Act.

Here the most vital point to bear in mind is the nature of the Commission, which is a fact-finding and recommending

body—a body that has no right to affect the rights of any person, or impose legal obligations upon any person.

I think the most important case that covers that is the Norwegian Nitrogen Products case which the Court will find in our brief at page 22.

I would like to dwell on that case a little bit so that
462 we can see just what it was. The case involved the tariff measure which as was held by the Supreme Court in this case, and as appears from study of the statutory structure, is purely a fact-finding and recommending body.

In other words, the tariff commission can recommend to the President that a flexible tariff rate may be increased or decreased. That was the salient factor in the decision of the court in this case when it decided that certain safeguards, said to be constitutionally guaranteed, did not apply.

The salient part of this case is the facts and the type of guarantees that are not allowed. It was a dispute between the Norwegian and American nitrogen industries. In order to determine the change of tariff, the commission had to know the cost of each of the industries. The American industry furnished their cost to the commission, in confidence. The Norwegian companies declined to furnish their costs, among other reasons, on the ground that they felt they were entitled to see what the commission had on the American costs. The commission also received exparte reports of its representatives who studied the industry in Norway and other foreign countries, because of the refusal of the foreign countries to give the facts.

So that you had a case where the cost factors of the
463 American company—the reports of investigators for the commission were all hidden in the commission's files.

Judge WISDOM. Let me interrupt for a moment. If I were rebutting that point, I would say the trouble with this case is, that it is tied in with contempt, and when the contempt case is heard, the only issue is whether or not there was contempt of court, which is a criminal proceeding. That is the distinction on the hearing in which there is no right to cross examine witnesses and no right to be confronted by accusers. You have, I think, an entirely different situation, where you merely have a question of determination of the proper tariff. Nobody is going to be put in jail on determination of the proper tariff, so there is not a necessity for confrontation and cross examina-

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tion and the preservation of a person's liberty as there would be in a different sort of case.

Mr. WHITE. If I may differ with Your Honor to this extent: there are no charges against individuals.

Judge WISDOM. There may never be any charges against any of these registrars.

Mr. WHITE. In fact, the Commission has no power to impose sanctions upon them. Its whole function is to study facts and to come up with a final result.

Judge DAWKINS. There is this possibility: as a result of the fact-findings of the Committee, the Department
464 of Justice might well decide to prosecute these complainants here, for violation of, I believe, Section 342 of the Civil Rights Act, which makes it a misdemeanor punishable with imprisonment up to a year and, I believe, a fine up to $500.

Mr. WHITE. Isn't that covered by their right to plead?

Judge DAWKINS. Let us suppose they say we take the Fifth Amendment and the witness accusing them definitely testifies, without having been cross examined, that there was a crime committed as a result of which prosecution ensues. It may well be the registrar in that case has a good defense against their charge of having violated the law. Nevertheless, he has been indicted, or perhaps a bill of information might be filed by the United States attorney. He is put to the trouble and expense of defending himself in a criminal case which, if the Commission heard both sides and permitted cross examination and confrontation, might never have come about.

Mr. WHITE. May I come back to my point that the Commission has permitted the type of cross examination Congressional committees do permit?

Judge DAWKINS. Do you contend that is effective cross examination?

Mr. WHITE. None of us, as lawyers, would say it is as effective as the kind we would conduct personally.

465 Judge DAWKINS. There is involved, not just a question of cross examination, but representation by counsel. That is one of the charges made by the complainants here.

Mr. WHITE. Other than cross examination, I can't see where the representation afforded by the statute is inadequate.

Judge DAWKINS. The statute says counsel can be present to tell them whether or not to take the Fifth Amendment.

Judge WISDOM. General White, this is an equity case, and in all equity cases decrees can be based on conditions.

Would it be within our authority to condition a decree, or order, on the right of the plaintiffs to cross examine their accusers?

Mr. WHITE. Your Honor, I don't think it would for this Court, in this proceeding, to take that step. I would think that would come—I believe it was put by Judge Dawkins as to what would happen should a subpoena be issued and the witness decline, or move to quash, and then you come into an enforcement proceeding.

You then get into a hearing as to the particular facts and issues in his case and whether some cautionary condition should be imposed from the judge asked to enforce the subpoena in order to protect that particular witness.

466 Judge WISDOM. Wouldn't it necessarily be improper for this Court to say, "we will enjoin the hearing, unless the Commission agreed to cross examine?"

Is that improper inequity?

Mr. WHITE. Your Honor, you get back to your first question when I stood up, and that was, would a condition—in effect, a striking down, or disapproval, of part of the Commission's procedure be contrary to the Congressional intent.

Judge WISDOM. I wish you would point out to me in the Act any language that shows you cannot adopt reasonable regulations giving such rights?

What exact language in the statute prohibits that?

Mr. WHITE. Only this, sir, that the Commission's rules may not be adopted in a plenary way. They must be consistent with the rules of procedure laid down in sections (A) to (K) of Section 102. Subject to those statutory provisions, of course, the Commission may adopt reasonable rules.

Judge DAWKINS. I believe I pointed that out, that they had that right to do so in my opinion on the restraining order.

Judge WISDOM. And rules you adopt, you cannot unadopt.

467 Mr. WHITE. Oh, yes. I do want to address myself more particularly, and, if I may, with the Court's permission, go back to the Norwegian nitrogen case.

While I am conscious that it was a somewhat different kind of body, yet I think the principle of that case does control.

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There, the very things I am talking about today was definitely an issue. No cross examination. No opportunity even to see the cost reports of this other company. No opportunity to cross examine the representatives of the Tariff Commission, who made investigation.

The court said because this is an investigatory commission and because it has no right to affect legal liability or obligation, by any action, those rules go out.

I think it is a question where we are really not on wholly new ground, but somewhat no different ground as to just what minimum Congressional safeguards should be required of this Commission.

Judge DAWKINS. In that respect, I notice the Nitrogen case was decided in 1932 at 288 U.S., whereas the Morgan case, which was a non-adversary proceeding itself, was decided some years later, in 304 U.S. It is not cited in your brief, but
468 I cite it in my memorandum ruling, where the Court said the proceeding before the secretary was not of an adversary character, as it was not upon complaint, but was initiated as a general inquiry, is futile. It has regard to the mere form of proceedings and ignores realities.

Mr. WHITE. It is not necessarily a question of whether there are two sides to a case. It is whether the action of the administrative body can affect legal rights.

Judge DAWKINS. Do you agree, in the proposed hearing, that was here restrained, that there were two sides to the case?

Mr. WHITE. Two sides to the case, Your Honor?

Judge DAWKINS. What I am getting at; if the hearing had taken place, would there not have been two sides involved, namely, the camplaining witnesses on the one hand as against the registrars on the other hand?

Mr. WHITE. No, sir, I do not.

Judge WISDOM. There would have been issues formed, would there not?

Mr. WHITE. There may have been issues of fact, but certainly the whole question is not whether one side says "A" and the other says "it is not 'A', it is 'B' ". It is a question of what the Commission can do after it hears that evidence—whose rights it affects.

469 Judge DAWKINS. It is certainly within the realm of reason to conceive that the actions of the Commission, in finding that a registrar had violated someone's rights, for

prosecution to ensue, that otherwise might not have taken place.

Mr. WHITE. Certainly not on any finding of the Commission. I think we all know Government prosecutors, and almost all prosecutors throughout the country, form their own prosecutive opinions.

Judge DAWKINS. That is true, but they would have some pretty heavy weight in favor of prosecution if the Commission found out as fact.

Mr. WHITE. I have seen Congressional committees condemn someone and there was no prosecution.

Judge DAWKINS. There could be, and there couldn't be. Let me put it that way.

Mr. WHITE. I would say, Your Honor, the hearing would probably bring the matter to the attention of the appropriate Federal prosecutor. I will go no further than that. I don't think it would have any weight in affecting his opinion, nor should it.

On a related question of an administrative hearing, the old case of McGrath against Daugherty is also quite significant. It comes rather close to the point Judge Dawkins was making, I think.

470 There, if you will recall, the resolution of Congress, in so many words, directed investigation of the administration of the Department of Justice by Harry M. Daugherty, and his name was used several times in the course of the reports. His brother, who was called as a witness, didn't appear on the ground this whole thing was beyond the power of Congress. First of all, it was a criminal investigation, as such, rather than a legitimate Congressional investigation; but, secondly, and this is right in our case, on the ground that the evidence to be produced might well produce evidence of the commission of Federal crimes, and the Court will, of course, recall that the Supreme Court held that was no ground for refusing to appear, and that the witness must be required to comply.

Judge WISDOM. What is the title of that case?

Mr. WHITE. McGrath against Daugherty, 273 U.S. 135, page 4 of the Government's brief.

The witness never actually appeared before the Committee in this particular case.

Page 16, is where we have another reference to it.

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Again, the point that is brought out, that an investigation by this Commission, or by Congress, may result in evidence of wrongdoing. It seems to me, if you say that is an objection to an investigation, then you are saying an investiga-
471 tion is going to be successful by exposing the evil that is the subject of a bad investigation.

Judge WISDOM. I don't think the object is it would expose some violation of the law. The object is not exposing a violation of the law, but it will subject the witness to criminal prosecution, without his having a right to cross examine his accuser and be confronted by his accuser.

I have not heard anyone object to exposing violations of the law.

Mr. WHITE. I must say that the suggestion that there is less than full opportunity to cross examine and a criminal prosecution may follow just doesn't seem realistic to me.

Judge WISDOM. It might in a contempt case. That is the difficulty, because in the ordinary case—we will say this examination of Hoffa. Hoffa can go over the same ground in a criminal case, if any criminal case is brought against him, but in the contempt case, he cannot go over the same ground.

Mr. WHITE. I want to point something out to the Court which, I think, is of real significance. We mention in our brief three other Congressional commissions which had similar powers to the Commission on Civil Rights. In each one of those, they had the power to punish summarily for contempt, just as the Congress does. This commission does not.
472 It must go to the Attorney General and have a Civil hearing before it is even to decide whether the witness has to testify at all.

Judge DAWKINS. That gets back to my point that I asked Mr. Gremillion, and would probably be a good point for you. Let us assume the registrars failed to show up. Then, the Commission would apply to this Court for an enforcement order.

Mr. WHITE. That's right.

Judge DAWKINS. Could this Court, in ordering the registrar to appear and testify, fully protect his constitutional rights? Could we, for example, order the Commission to grant him the right of confrontation and cross-examination?

Mr. WHITE. Let me put it this way: I tried to concentrate on that question during the coffee break.

If Your Honor should put should a condition in the order, it would mean, if the Commission wanted to comply, it would. If it felt it could not, it would be tantamount to a refusal to issue an enforcement order, which would have its usual course.

Judge WISDOM. Do you think the Court has the power to put that in?

Mr. WHITE. The Court has the power to deny an enforcement order.

473 If the Court wishes to impose a condition, I don't think it is acting out of its jurisdiction. This is not to pass on any individual condition, now, that we are discussing. If the condition was seriously in variance with what I think is the Congressional schedule of procedure, we would have, in effect, a pro tanto declaration that the statute was not constitutional.

Judge WISDOM. Only if the procedures and the statute are inseparably connected.

Mr. WHITE. Yes, sir.

Judge WISDOM. I read the statute several times and I have re-read it recently, and I took a look at it during the coffee break and I failed to find anything in that statute that prevents your giving witness the right to cross examine complainants where they may be exposed to criminal prosecution.

Mr. WHITE. Well, I think this: the Commission adopted its rules using its best judgment as to what was the command from Congress.

I think the question, really, for the Court to decide is whether, in view of the law we now have and that which we will attempt to give the Court in the supplemental brief on the minimum requirements on this type of commission, and viewing the commission in its special status of an ad hoc short-lived body—viewing its overall importance, measure whether

474 there is such a balancing that the procedures as were laid down are adequate.

Judge WISDOM. Don't get the wrong impression. I have an absolutely open mind on this question.

Mr. WHITE. I think it is entirely right to quiz us on the question as to how far there is a mandate from Congress here.

I think what is before the Court is not what the rules ought to be, but whether, as they are, they are unconstitutional.

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Judge WISDOM. I would like to ask you this question: do you believe that the statutes derived its authority from the Fifteenth Amendment solely?

Mr. WHITE. No, sir. That was treated in a footnote on page 5 of our brief. I think footnotes are bad things. I won't have them in the supplemental.

Judge WISDOM. We write them.

Judge DAWKINS. And we read them.

Mr. WHITE. What we say is that the statute was based principally upon the Fifteenth Amendment and also upon Article I and also upon the Fourteenth Amendment.

Judge DAWKINS. You have covered that.

Mr. WHITE. There is a direct statement, too, based upon the protection of the Federal right to vote.

Judge WISDOM. Is this a fair statement of your position; so far as the action of private individuals is con-
475 cerned, do you believe that the Act is constitutional, in that Congress has the authority to legislate even if it affects private individuals under Article I?

Mr. WHITE. In a Federal election.

Judge HUNTER. I don't think anybody, per se, quarrels with you on that point.

Judge WISDOM. Your opponents take a position that Congress can legislate only with respect to State actions.

Judge DAWKINS. There will be the presence of a Federal power without an enforcement authority.

Mr. WHITE. That's right. In part IV of this statute, Section (B), it says: "No person, whether acting under color of law, or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with a Federal election."

On that point, since you have brought me back, Judge Wisdom, I think there is one basic defect in any attack on its delegation, and that is you must define, precisely, the limits of a field where Congress is granting investigative powers and not power to enforce.

In Section 104(A)1, it says, "investigate allegations in writing under oath or affirmation that certain citizens of the United States——"

476 That, to me, means official state action. I don't think an individual can deprive. He can interfere or coerce, but he cannot deprive.

Judge WISDOM. General Gremillion is making the same argument when he said only the registrar can deprive them of the right to vote.

Mr. WHITE. There were three bases, the Fifteenth, the Fourteenth and Article I of Section 2, which no one challenges, and there is one other point on that.

In the Watkins case, talking about the power to investigate, this is on page 4 of our brief, they ended with the last sentence: "It includes surveys of defects in our social, economic or political system for the purpose of enabling Congress to remedy them."

They have to view the field in order to recommend legislation.

Judge WISDOM. What is the status of the Raines case?

Mr. WHITE. After the appellee had filed his brief, the court instead of noting public jurisdiction set it on the summary list for early October with the statement, that, at that time, they will determine whether jurisdiction exists, or not.

477 I have asked the Solicitor General about it, but it may mean the court felt the constitutional question should never have been raised in that case.

Your Honors are by far more familiar than I am with some of the dispositions of the Supreme Court, but it is up for actual argument and disposition, I believe, in the early term in October.

I would like to go into, at some length, and discuss the Administrative Procedure Act. Perhaps, I can do that just as well in rebuttal.

Judge DAWKINS. That is a point I am very uncertain about, and it is one of the things I had in mind, when I reserved the right to change my mind in my original opinion.

Judge WISDOM. Is there anything in the statute, in your opinion, that prohibits the Commission from giving the registrars, either notice of the complaints in the form of a summary, or copies of the complaints?

Mr. WHITE. No, sir, nothing in the statute.

I can answer that further by saying I think there is nothing in any of the decisional law which would require them to do so.

I think, if the Court will permit me, I had better take the Administrative Procedure Act a little now because that really isn't rebuttal, at all.

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Frankly, this is one of the hardest statutes to really
478 understand in its application that I have ever had the misfortune to look at. But, there is one basic thing about it that is important, and there is no such thing as all of its procedures applying, because an agency is covered somehow under it. It just isn't that way, at all. There are certain sections which do apply under certain proceedings.

For example, there is a certain section which applies to the witnesses being compelled to appear, but there is no such thing as a blanket provision.

I would like to stress one or two points. As to its general coverage, if Your Honors please, we all keep saying: "any agency of Government except the Congressional, the courts and territorial governments".

Actually, "agency" is defined there, and it says, "any authority of government". It is not just "agency".

Then, you go back to the legislative history and you find "authority" means an authority of government with power to give binding decisions.

That is in our brief. And the quotation from the committee report on that.

So that I think right at the outset, we don't find such a body as the Commission on Civil Rights possibly applicable or subject to the statute, but let me just give briefly my further analysis of this thing:

479 The only sections under which there could be any possible safeguards imposed are sections 5, 6 and 7.

Incidentally, the United States Code is all wrong. You never find them unless you look down at the bottom, but these are section 5, 6 and 7.

Those are the sections that speak of notice of time and place of hearing, its legal authority and the matters of fact and law to be asserted. I am speaking of section 5. I don't conceivably see how section 5 can apply here.

Judge DAWKINS. That is the one I refer to as section 4 in my opinion.

Mr. WHITE. One difficulty is that Congress never has a section 1.

In section 6, it says any person compelled to appear in person before any agency shall be afforded the right to be accompanied, represented and advised by counsel.

That section 6 is a blanket section which applies if the agency is one covered below; if the agency is an authority of government which can make binding adjudications, but that is not the situation here at all. The Commission complied clearly with that one.

480 Also, section 6, provides that the agency shall grant subpoenas upon request if they think it is reasonable. In other words, it is precisely the right the Commission affords on the request of a party to have some witnesses called.

Section 6, even if it applied, is complied with.

Judge WISDOM. That is pretty well treated in your brief.

Mr. WHITE. We want to enlarge on it.

Judge WISDOM. Enlarge on it all you wish. We will be glad to have the benefit of all you have to say in your supplemental brief.

We will give you a few minutes to rebut anything General Gremillion and Mr. Shaw have to say.

Mr. WHITE. Incidentally, I don't think the Court needs a formal offer of our answer.

Judge WISDOM. That will not be necessary.

General Gremillion, do you want to go ahead with your rebuttal?

Mr. GREMILLION. If the Court please, I would like, if possible, since the burden of proof is on us, to close the argument, if the Court has no objection.

Judge WISDOM. All right. If there is no objection, we will hear from General Bennett and then Mr. Shaw.

481 The government will then have an opportunity to answer Mr. Shaw, and we will let General Gremillion close.

Mr. BENNETT. If it please the Court, I would like to say at the outset that I am very gratified that the Court gave my State the permission to enter in this case. We have a State act in which it is my duty to take any and all efforts possible to prevent Federal encroachment upon State rights, and it is from that statute whereby I appear this morning.

I have followed the Civil Rights legislation from 1957 down to date, having testified before the House hearings in 1957 and Senate hearings this year.

I want to make my remarks just as brief as possible, and I think they may be enlightening on a couple of questions the Court submitted.

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First, I would like to ask, is this Commission a rule-making body? Certainly, it promulgates its own rules and regulations.

Second, does the Act give the Commission the power to adjudicate, as contrasted with the powers to investigate?

We say, it has the power to adjudicate. Certainly, it makes its rules of procedure. It has the power to subpoena witnesses.

It has the power to administer oaths. It has the power
482 to take and transcribe testimony. It has the power to determine whether there has been a deprivation of civil rights. What other power does the Court have?

Judge Dawkins asked Mr. White if he thought this was a Congressional committee. I would like to call the Court's attention to the first paragraph setting up the Act:

"There is created in the Executive branch of the government, a commission on Civil Rights (hereinafter called the 'Commission')"

It is in the executive department.

In the second paragraph, it states the Commission is appointed by the President, as contrasted with the Congressional committees, which are appointed by its own members—by the president pro temp. or other leaders in both Houses.

Judge WISDOM. Isn't that true of most Federal agencies?

Mr. BENNETT. Yes, sir, but the question, as I get it, was this: is it a Congressional committee, like the Dies Committee, or the McClellan Committee? Was this a Congressional Committee as contrasted with an Executive Committee?

They tried to set up the Fair Employment Practices
483 Committee, which was to be set up by the President. This was an Executive agency as contrasted with a Congressional committee.

What I am getting at is the heart of your question of whether or not this Court, in its final decree, can impose a limitation upon this Committee to provide that the Committee be confronted with the complainants?

That poses the question that the Judiciary has no right to impose its decrees upon the Executive. If this is an Executive committee, the committee must stand as a whole or fall as a whole.

Judge DAWKINS. Courts often do this: in the course of civil proceedings before it, they order an Executive agency to do or not to do something. If the Executive agency, depending upon its position as plaintiff or defendant in the case, fails to do

so, the court either dismisses the case of the plaintiff; or if it is the defendant, it takes such other action to enforce its ruling.

Mr. BENNETT. Mr. White said he thought this was a Congressional committee.

Judge WISDOM. He said, I think, it has the same powers and attributes as a Congressional investigating committee.

Mr. BENNETT. It is my contention, it is an agency of the Executive branch of the Government.

484 Judge HUNTER. You and Mr. White reached the same conclusion, because each of you say if the rules are wrong, the Act must fall. He believes that is true, and you are saying that is true.

Mr. BENNETT. I hope so.

I don't think anyone mentioned, but I am sure General Gremillion in his usual competent manner, will reply to the question as to whether or not there was irreparable injury upon which to bottom an injunction upon.

As I said, I followed the Civil Rights Act fairly closely the last two years.

In my particular state, of Arkansas, we have what is known as a poll tax. You pay $1 and you vote. We have not had the Civil Rights Commission in our state yet. However, I understand through the hearings we had in May in Washington, they have received a total of three complaints from my state.

I would like to say this: if I have ever seen a commission organized along the lines of a roving Grand Jury, this one is. Who do they report to? What is the idea of the report? Why bring in a witness and compel him to testify against himself without the benefit of counsel—without being confronted with his accuser and without being informed as to who the accuser is?

485 We certainly, in our brief, and I think properly so, compared with procedure of this Commission with the old Star Chamber proceedings that prevailed in England two or three hundred years ago.

Judge WISDOM. That was secret proceeding, was it not?

Mr. BENNETT. The way I understand it, the defendant was brought into the House of Lords. The King's attorney accused him. He was never permitted to open his mouth, and the counsel was not permitted to open his mouth, and the

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House of Lords voted yes or no, and he was never permitted to cross examine or permitted to have any of the safeguards we know today under the Constitution and case law and common law we adopted from England.

Judge DAWKINS. In a Grand Jury proceeding, all the proceedings are secret and are not publicized as would be the Commission's report to Congress, or the President, or the very proceedings of the Commission itself, and in addition to that, if an indictment is returned, then the defendant has the right to a fair, open trial with all the safeguards. If it is not returned, that matter is secret. The fact that he was even under investigation was kept secret.

Mr. BENNETT. Judge Dawkins, one of the most valuable things we have these days is our reputation.

Judge DAWKINS. That is what I am talking about.

486 Mr. BENNETT. This Commission has the right to bring in John Doe and then the Commission makes the report to Congress where John Doe's name is besmirched.

Judge WISDOM. He has an opportunity to testify.

Mr. BENNETT. If he doesn't know what's going on?

Judge DAWKINS. Judge Wisdom, he is talking about where the Commission is operating in Executive session.

Mr. BENNETT. Grand Jury proceedings are secret. If you don't get an indictment, you don't hear about it. But in these Star Chamber proceedings, they can make a report to the United States Congress and mention the registrars' names and they don't even know their names were brought up.

I say, the right of cross examination—to be confronted with your witnesses, which this Commission's rules do not provide for, and I think, they conceded they are both intertwined to such a degree that if the rules fail, the Act should fail constitutionally, and for that reason, the whole Act should be stricken down as an invasion of the Civil Rights of the people of the United States.

Thank you, very much for giving me this opportunity to address the Court.

Judge WISDOM. Mr. Shaw?

487 Before you start, Mr. Shaw, do you know of any case, holding, that in a hearing of this kind the witness is entitled to cross examination and confrontation of accusers?

Mr. SHAW. Frankly, Your Honor, I know of no law that ever attempted to set up a hearing of this kind.

Judge WISDOM. That doesn't answer the question.

Mr. SHAW. I was going to say this: the case of Greene vs McElroy did go beyond what we are asking in this particular case. This particular type of commission we are dealing with here is unique, insofar as I know.

I don't, offhand, recall the citation, but one of the cases I read recently in connection with this, gave a rather elaborate history of investigation, particularly fact-finding commissions.

It spoke of the origin in the English Parliament of this type of procedure, and the Supreme Court of the United States went on to point out the great efficacy of the crown commissions, and the general good reputation they enjoyed sprang largely from the fact that they did not have subpoena power; they were a voluntary commission and, therefore, the facts which they gathered were gathered by people appearing voluntarily before them.

I think that is one of the things which distinguishes
488 this particular commission. In this case, these people—the ones I represent are individuals, and not registrars—but it is true in both cases, they have been subpoenaed to appear before this Commission involuntarily. They have been subpoenaed with the general understanding they are to testify, first, on the basis that certain charges have been made against them in writing, under Section 104 of the Act, and those charges would have to conform with that section, that they denied someone the right to vote on account of race, and so forth.

Judge WISDOM. Your case raises a question of private action, more directly than the other.

Mr. SHAW. Yes, because my people are individuals. One of them was a former registrar, but the remainder have never been officials of Louisiana, as far as I know.

Judge HUNTER. You don't raise the question of unconstitutionality.

Mr. SHAW. I raise the question of whether or not the rules were ultra vires, and, secondly, unconstitutional.

Judge WISDOM. Do you take the position the rules and regulations are so inseparably connected with the statute, that even if the statute were declared constitutional, that the rules and regulations were unconstitutional and the statute would fall, too?

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489 Mr. SHAW. No, Your Honor, except a certain portion of the rules.

The case of Greene vs McElroy is the case, we think, on which the Court issued its restraining order on.

That type of thing—due process—cannot be mistreated. It has to be specifically acted upon by the Congress or legislature.

That was the industrial case.

Judge WISDOM. That was a question of whether or not a person was a security risk.

Mr. SHAW. Yes, sir. The basis of that case is that the Government set up a board to provide who would be permitted to handle certain classified information. The Executive Department set the board up by implication, and in doing so, the board adopted certain procedures and those procedures denied the right of confrontation and cross examination, and so forth.

Judge WISDOM. The distinction in that case is that the board actually made an adjudication, or made a ruling that cost this man his job; is that correct?

Judge DAWKINS. The further distinction is made in the arguments on the preliminary restraining order that that committee did nothing more than neither Congress nor the President authorized that type of procedure, and, therefore, it was reversed on that ground specifically.

490 Mr. SHAW. I believe, as background, Chief Justice Warren went on at great length and with great emphasis on these constitutional rights of confrontation and cross examination, not only in a procedure before an administrative agency of that sort but in all types of hearings and he quoted at length Professor Wigmore's statement as to the value of cross examination in reaching the truth.

Judge WISDOM. Will you eliminate all commissions, or agencies, which have a right to investigate unless the power of cross examination is provided?

Mr. SHAW. No, Your Honor, I would not.

Judge WISDOM. Is this a special commission where cross examination should be allowed, possibly, because of the contempt?

Mr. SHAW. That is one point. This Commission has the right to subpoena. That is one of the powers granted them which is a particular power we are concerned with—and the power we are particularly concerned with is directing them to

investigate allegations in writing under oath which is more than mere fact-finding.

The purpose of that is to develop two things: one, is a basis for prosecution, and I don't think you can get away from that in any way you look at it.

Judge WISDOM. It is not the purpose of the Committee to lay a predicate for criminal prosecution. The
491 purpose of the Committee is to find facts and report to Congress and give Congress sufficient information so that Congress will be informed in passing adequate legislation.

Mr. SHAW. Section 2 and 3 do what you are saying. It gives all the powers in this field, but in every other field.

Section 1, which we are dealing with, sets up this particular type of proceeding.

The primary purpose of that is not merely to find facts. If that was the only purpose, they would have already had the power, by virtue of section 2 and 3.

Judge WISDOM. I don't want you to lose your trend of thought.

You were going to tell us whether it was more than a mere fact-finding commission.

Mr. SHAW. It directs them to make a final report in another section of the act, to Congress at the time they completed these investigations and findings. Congress is telling them to investigate certain crime. That is what we are dealing with here, not general fact-finding power. That purpose is two-fold. The primary purpose is to set up a basis for charges that they have violated Federal law, both civil and criminal.

Judge WISDOM. Has Congress defined action by
492 private persons as a crime where it interfers with a voter voting in a Federal election, except with respect to this very narrow case of a conspiracy that arose out of the Ku Klux Klan, and, therefore, might have sufficient force in the community so that an individual wouldn't need to conspire with anybody.

Judge DAWKINS. I think that would depend on how broad you read the Civil Rights Act.

Judge WISDOM. Is it really accurate for you to say this crime has already been defined?

It seems to me, there may be an area which has to be defined and which may, therefore, be an area which Congress can

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legitimately consider and appoint a commission to get the facts.

Mr. SHAW. I believe Congress, at least in so far as the point you are speaking of, has legislated covering this matter criminally.

Judge WISDOM. I think this is an important point: doesn't that go more to the question of the power of Congress to act in this field rather than the future definition of some crime?

Mr. SHAW. I think it goes to the intent of Congress in setting up this type of commission. If that is their purpose, then the traditional safeguards of due process must be afforded to people under that particular type of
493 investigation.

After all, I think that is the whole question, which is, due process of law—whether or not these people are entitled to that in this type of hearing.

Cut it any way we like. We know, as a practical matter, the Civil Rights Commission functions as a court of public opinion. Previous hearings have already proven that. These people and their reputations, and so forth, are going to be affected by the Civil Rights Commission. We know that. It happened already in Alabama.

I am speaking of my clients. We are not objecting to them going ahead with the hearing, if they would give us the right to prove our side of the case. We would welcome the opportunity.

I would like to say one thing about the hearing which alarmed me and I mentioned it in the original argument, but it has not been mentioned here. A list of questions was submitted in advance.

Judge WISDOM. Is the questionnaire in the record?

Judge DAWKINS. It is attached to General Gremillion's affidavit.

Mr. SHAW. There were 315 questions. Many of the questions go beyond with what a court of law can deal with. They go into moral rights of permitting only educated
494 people to vote. They are purely questions of a person's mental process and his own opinion.

We object strenuously to being brought before a Commission without due process of law and not being permitted to answer to the moral aspects of things.

Judge WISDOM. Why wouldn't the proper time to make that objection be when the question is asked during the hearing?

For the sake of argument, if your clients attended the hearing, and if a question were asked as to their opinion, they would have a right to decline to answer because it calls for a personal opinion.

If it incriminated them, they could plead the Fifth Amendment. Does that hit hard enough at the issue before us?

Mr. SHAW. What we are talking about is the due process of law. If we know everything in advance, we will know how to be prepared to meet that. We don't know that, and we are not going to be prepared to meet it.

A particular portion of the Act is the rulings. The Commission's rulings are final and we cannot appeal it to a court.

Judge HUNTER. Are there any cases, Mr. Shaw, that say Congress cannot delegate to a commission the same investigative powers it has?

495 Judge DAWKINS. You mean a commission of the Executive branch?

Judge HUNTER. Yes.

Mr. SHAW. Here is what the Government says about this Commission:

"Necessarily, as a fact-finding or investigatory body, Congress considered the Commission as its appendage, or vehicle, to serve functions similiar to those of a Congressional investigatory committee."

That raises the question of whether Congress can raise an investigatory commission and make it a vehicle of Congress.

Judge WISDOM. Mere fact-finding does not seem, to me, legislative or executive. It may be either or both. They may be overlapping.

Mr. SHAW. What I am saying in this: if the legislature, or the Congress, can create an agency which is to be an agency of the Executive Department of the Government, yet make that agency a mere vehicle of the legislature, or appendage of the Congress, then we have completely destroyed the separation of powers.

Judge WISDOM. I would consider the separation of powers to be where Congress would legislate, the Executive branch would execute, and the judges shall judge.

496 In this case, the Commission is not being asked to legislate or judge.

Mr. SHAW. The Government, itself, said it is a mere appendage of Congress.

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I say, that they cannot have both.

Judge DAWKINS. They set it up so it is neither fish nor flesh nor fowl.

Mr. SHAW. This is not a Congressional committee. This is merely an executive agency and it is bound by the same rules of the other executive agencies.

I want to point out something else about the Greene case: the court, in that case, did not say Congress had the power to grant to this board, or commission, the right to deprive these people of all these safeguards. It said it would restrict its holdings to the fact that they had not exercised these powers and that such a right could not be granted even though specifically granted.

Judge DAWKINS. In that respect, I believe some reviewer for the United States Law Week made that same observation. This reviewer, who, of course, would be a lawyer, stated with respect to Greene vs McElroy, "the narrow ground of the holding was that neither Congress nor the President has authorized
the defense department to set up such a system, but
497 the opinion carries strong overtones that such a system
may well be unconstitutional even if authorized by Congress."

Judge HUNTER. Let me be sure I get the various disagreements between you and Mr. Gremillion.

Mr. SHAW. I don't say we disagree. We probably are not 100 percent in accord.

Judge HUNTER. First, you agree this Court could, if it found it proper, to strike down, at least partially, the rules of procedure of the Commission without declaring the Act unconstitutional.

Secondly, you agree Congress has the general authority to legislate on this subject matter under Article I, Section 3, of the Constitution.

Mr. SHAW. What I would like to discuss briefly, if we want to test it, the proper way to test it would be to refuse to appear and let them come in Court and get an order against us.

Judge WISDOM. I suppose that would involve a delay, as far as you are concerned. I am in favor of deciding it now, unless the Supreme Court tells us to send it back because we decided it too soon.

Mr. SHAW. That is completely inconsistent with the previous recommendations of the Civil Rights Commission, itself.

498 I would like to quote a statement issued by Governor Battle after the first day of hearing in Montgomery. Governor Battle, after giving his own personal background, said.

"It is from the background, ladies and gentlemen, that I am constrained to say in all friendliness, I fear the officials of Alabama and of certain counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people."

Judge DAWKINS. The Commission also made a resolution to the same effect.

Mr. SHAW. Yes, sir. The Commission issued a statement that it regretted the failure of the people to appear and testify.

It is inconsistent to tell us now we should do that, after condemning these people for doing it.

We are seeking to protect the reputation of the people we represent. As Attorney General Bennett said a reputation is a valuable right.

As the old saying goes: "If you steal my purse, you steal trash. If you steal my good name, you steal everything I have."

499 I think we are entitled to due process of law in protecting our good name in these proceedings.

One statement I would like to point out to Your Honors before I close.

I believe a lot of argument around the Administrative Procedure Act that was raised deals primarily with the discussion of the definition of adjudicate.

I think the definition of "adjudicate", as contained in the Act, would enlighten and change the minds of many people who have not studied that Act very carefully.

"Adjudicate" is not "sanction". All an adjudication is, is a formulation of an order.

"Order" is further defined to mean the whole, or any part, of final disposition, and any final disposition made in this hearing would be an adjudication by this Commission.

The Act definitely provides they shall submit a final report to Congress before a certain date, which would be an adjudication when that is done under the terms of the Administrative Procedure Act.

Further, they have the right to exclude counsel, which would be an adjudication. They have a right to pass

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upon evidence and do other things which would amount to adjudication.

500 I think they come under the Administrative Procedure Act. I don't think it is necessary to decide whether they do, or not, because the opinion of the court in the Greene case requires this procedure be accorded people which would seriously affect the persons involved.

We have alleged it would be a matter of personal reputation, and we can prove that in our suit.

Judge WISDOM. I think we will have a short recess of perhaps ten minutes, and when we come back General White will have an opportunity to speak in rebuttal to Mr. Shaw, and then General Gremillion will close.

I am not sure we made it clear to Mr. Shaw, but we will be very happy to receive any supplemental brief you wish to file and you will have the same ten days in which to file the brief.

Mr. SHAW. Thank you very much.

Judge WISDOM. We will recess for ten minutes.

(Short recess.)

Mr. WHITE. If the Court please, I will be very brief indeed.

One point I mentioned in connection with Mr. Shaw's case will be cleared up when the stipulation is filed.

501 I would like to state to the Court now that Mr. Shaw's plaintiffs are not registrars, but they are persons who have engaged in the challenging of voters throughout the eastern part of the State. There has been a suit filed with respect to Washington Parish which will be covered by the stipulation in which they are charged to be acting under color of the laws of Louisiana because of the authority granted to them as registered voters of the Parish.

Mr. SHAW. May I say, in that connection, that is true of part of them.

Judge HUNTER. What are the categories?

Mr. SHAW. We have one retired registrar——

Mr. WHITE. Each of them is a former registrar or engaged in the purging of voters.

Mr. SHAW. Possibly, with one exception. I am not sure.

Mr. WHITE. One word about Greene vs. McElroy. I want to stress this one fact, that the confrontation issue is the only difference from what we have in this case. It was, as a result

of ex parte undisclosed information from undisclosed witnesses, that the action was taken. That is it.

Executive session has been mentioned. I omitted in my principal argument to point out that in connection with the possible defamatory or incriminating testimony, there is an obligation on the Commission, if it feels the testimony
502 to be of such a nature, to take it in Executive session. That is far from Star Chamber proceedings. It is intended to protect against the very thing discussed here. I think it should be treated definitely as a protection for persons involved, rather than anything else.

Judge DAWKINS. It could be protection, as I understand it from the arguments on the preliminary restraining order—it could be protection either as shown by the statute where it would be defamatory for persons who are accused, or it could be protection for accusers against whom economic reprisals might be secured.

Mr. WHITE. I think that is also possible.

Judge HUNTER. Is there something in the Act that when they hear evidence in Executive session, they are forbidden to say anything about it on the outside?

Mr. WHITE. Yes, it is a criminal penalty. That appears in subsection (G):

"Whoever releases, or uses, in public without the consent of the Commission evidence or testimony taken in Executive session—" and so forth.

That is actually confined to staff members, and so forth, who are under the duty not to disclose it.

Judge HUNTER. Not to the individual?

503 Mr. WHITE. No, sir. Of course, I know the Court is going to give the fullest consideration, perhaps, after our briefs are in, but I want to leave this one point: that is, as each member of the Court has pointed out, Congress did not prohibit, in any specific sense, the Commission from adopting full cross-examination rules.

I would urge upon the Court the strong legislative history in both S. 83, the Senate version which was rejected and which gave all the most meticulous rules right up to the court, and the original House bill which did the same thing.

Judge WISDOM. That was 6127 in 1956.

Mr. WHITE. Yes, sir. Both of them had court-type procedures, and I would like to furnish the Court with some more

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specific reasons, such as Attorney General Brownell's testimony, relative to the reasons for rejecting its suggestion.

Judge WISDOM. I wish you would do that. If they are available, furnish copies of the Committee report on this statute and also the 1956 statute. I don't have the Committee reports except in the United States Congressional Service.

Mr. WHITE. I will dig up everything we can. We will furnish copies of the subcommittee rules as soon as we can get them from Congressional sources.

504 Judge HUNTER. You are saying by implication from those sources that Congress meant these gentlemen on this Commission should not permit cross examination?

Mr. WHITE. Yes, sir, and they should not be confronted by the accusers.

Judge WISDOM. That raises, of course, the difficult question of what is ever meant when Congress rejects legislation.

Mr. WHITE. I wish to thank the Court for permitting me to argue this case.

Judge WISDOM. General Gremillion.

Mr. GREMILLION. May it please the Court, I will try to be as brief as possible.

We do have a few important comments we would like to make which we consider very urgent in the presentation of our case.

First, a lot has been said about Greene vs. McElroy, and I don't want to devote too much time to that, except to say this: that case cannot, in any way, offer any solace, or comfort, to the Government because the mere production of the complainant's accusers at the time of the hearing still does not afford these petitions the opportunity to employ, consult and confer with counsel. These are provisions of the Civil Rights Act which prevent these things which are incorporated into their rules, which I will discuss immediately after this.

505 It will not afford them to prepare a statement in their own behalf, examine their own records, cross examine intelligently, testify in their own behalf, prepare and bring evidence in their own defense and exercise their rights to full protection as indemnification by the Administrative Procedure Act.

Coming to the rules on page 10 to 12, the Government's brief, inferentially, states that the rules that they have adopted are

so tied up with the rules of procedure authorized by the Congress that they cannot be separated.

If Your Honors will carefully read these rules, you will see Rule No. 1 is a reiteration of Section 105(F). Rule 2 is a complete reiteration verbatum of Section 102(A) of the Civil Rights Act, which is public law 85–315.

These are the rules the Commission adopted. They adopted them July 1, 1958. They are just verbatum, right down the line. They quote the Act itself.

"3. In addition to these statutory provisions, the Commission has adopted the following supplementary rules of procedure: * * *"

Then, they go down and they have (A), (B), (C), (D), (E), and (F); and several of them, of course, we say are unconstitutional.

506 For instance, "H. The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing."

If that is not adjudicating and being a judge, what is it?

Then, we come to the next one: "I. Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

There is one, in addition to that, which I would like to comment on that we have not mentioned, and this is in the Act, Section 102(D).

"The Chairman, or acting Chairman, may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings."

Suppose one of these registrars had a witness testifying against him that they denied him the right to vote because he was a person of color and the attorney made a loud objection, or a loud shout, and the Chairman would say, "Get out".

Judge WISDOM. Isn't that like Court procedure?

Mr. GREMILLION. You can punish me by contempt, but not by putting me out of the courtroom.

507 Judge WISDOM. The Court doesn't do that very often. Lawyers are not arbitrary.

Mr. GREMILLION. I have no guarantee the members of the Commission won't do that, and we cannot presume those particular things in the face of constitutional provisions which give administrative agencies that authority.

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That is what we come to when we actually consider what has occurred throughout the years, particularly in the last few years on the growth of administrative agencies. That is why Congress was careful in passing the Administrative Procedure Act.

Much has been made of the Norwegian Nitrogen case. We submit that the Norwegian case does not make the distinction sought by the defendants in their brief.

We simply call the Court's attention to a statement made by the Supreme Court in that case:

"For still another reason, the ruling made by the Commission was not an arbitrary refusal to give the kind of hearing that, in the circumstances of this particular inquiry, was fair and reasonable."

In other words, even in a regulatory proceeding the Supreme Court of the United States said you have to resort to a
508 fair hearing. In any kind of a hearing, in order to be a fair hearing, it must be one that gives you fair play.

I also wish to point out that the court, in reaching its conclusion in the Nitrogen case, that a fair hearing had been afforded, there must be a distinction as to the reason why the court reached that conclusion. The petitioner was not subpoenaed to appear at all, and appeared of his own volition.

None of the rights afforded the petitioner in the Norwegian case have been afforded the petitioners in this case.

Let me say this: everyone has a right to have a fair hearing, not just John Doe and one class of citizen. The Nitrogen case is authority for that, and it goes right on through our jurisprudence to the Supreme Court of the United States. It was held in the Morgan case and in the Watkins case that you had to have a confrontation of the witnesses, and all of this, Your Honors, was reaffirmed in the Greene vs. McElroy case.

I am going to ask the Court to pay particular attention to our reply brief from pages 6, 7, 8, 9, 10 and 12, in which we discussed the irreparable injury afforded our clients. I am not going to go into that, because I think our brief on that is sufficient.

509 Judge Dawkins asked the question could the Court stipulate rules that the procedure could follow in the event you asked for an enforcement order.

Judge WISDOM. I would put it in these terms: we might be able to attach as a condition to granting the decree, the require-

ment of reasonable rules, such as notice, cross examination and confrontation.

Judge DAWKINS. The big question is whether or not, if we did so, would the Supreme Court affirm it.

Mr. GREMILLION. It is our opinion this Court is not cloaked with that authority because even if it were, I am sure the rules would be—

Judge WISDOM. Don't you want us to say you are entitled to cross examination?

Mr. GREMILLION. Oh, yes.

Judge HUNTER. I don't believe Congress said that. I don't believe Congress said there can be no cross examination. Judge Wisdom interrogated Government counsel, and they said they think it is implied, but it doesn't say that.

Mr. GREMILLION. Witnesses at the hearing may be accompanied by their own counsel for the purpose of advising them of their constitutional rights.

This isn't sufficient, under the decisions of our court. It does not comply with the provisions of the Administra-
510 tive Procedure Act. That is where the conflict comes in. That's why we say when you take the provisions of the Administrative Procedure Act, this particular provision does not apply.

Judge HUNTER. I don't think there is anything in the rules which prohibits cross examination.

Mr. GREMILLION. I don't think the Court can hold that way.

Judge DAWKINS. If we were to adopt the cases that the General White urged to the effect that this is merely, in effect, an arm of Congress, would we be rewriting the rules of Congress by requiring that cross examination and confrontation, etc., be allowed?

Mr. GREMILLION. When you consider Section 102 (A) through (H).

Let us remember the purposes of the Commission are threefold. They want to investigate voting deprivation because of color, and they are also to go on and look into discrimination in other fields and determine the application of Federal laws, and so forth. Here is where they say that is not necessary: we already have laws on that subject. You talk about the Classic case. That was easily distinguishable. That was a Federal prosecution of a violation law in a Federal election. That is not present here.

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Judge WISDOM. I talked about that case only to show it is not necessary to say that this Commission derives
511 its authority only from the Fourteenth and Fifteenth Amendments that deals with State actions. But, on the contrary, Congress has the right to legislate with private persons, under Article I of the Constitution.

Mr. GREMILLION. That may be so. Those laws already exist. Congress authorized this Commission to investigate violations of State law. Bear in mind that we have good election laws in this State. Those elections laws and registration laws were enacted pursuant to Article X of the Constitution of the United States. Any violation of our State laws, or any discrimination, is already covered by State law.

So, therefore, what would be the purpose and authority for Congress to investigate and look into the denial of due process of law and the applicability of Federal laws or alleged violations of State laws? We have ample redress. We already have ample Federal laws on the matter. We already have State laws on the matter. What we are talking about here is that they are not investigating Federal laws. They are not investigating School Board elections, or local elections, because they do not have the authority to do so.

Judge WISDOM. If that statement is accurate, then, of course, you are completely right; but that is not the way I read
512 it. I read it as applying to Federal elections, and I read it as applying to where there is very little legislation, and that is an area of interference by private persons in Federal elections.

Mr. GREMILLION. Can the Court tell us why the registrars were subpoenaed?

Judge WISDOM. I have no idea.

Judge HUNTER. If they are on the registration rolls, they can vote in Federal and State elections. If you deny someone the right to register, then you are denying someone the right to vote in a Federal election.

Mr. GREMILLION. Any person who claims his rights are so deprived has ample redress in our Courts at no cost to him and he can be heard in 48 hours.

Judge WISDOM. Let us confine the principal part of your rebuttal argument to rebuttal, and not go over ground that has already been covered.

Mr. GREMILLION. I was just attempting to justify my position.

Mr. White told the Court that the Commission's reasons for withholding information about complaints and complainants—the reason for the adoption of the resolution was one of economic reprisal, or alleged economic reprisal. I am not going to burden the Court much longer.

513 I must confess that I was greatly impressed when I heard the President of the United States on television last night. To paraphrase him, he said this: "This is still a Government of the people, by the people and for the people, and not a Government of the people by the Government and for the Government."

I would like to convey to this Court the fact of how deadly serious we are about this entire matter—about how serious are the questions presented to this Court.

Never before in the history of our nation have individual citizens been subjected to as much Governmental control and influence in all aspects of our every day behavior, as they are today. We live today in a far different era of Government influence than we did, say, fifteen years ago.

Rules governing investigations by administrative agencies created by the Congress thirty years ago, when such agencies were few and relatively inactive are not longer applicable or sufficient to protect individuals under the great multitude of active governmental agencies existing today.

This is startlingly brought about when you examine the brief of the Government and note the antiquity of the date of the great majority of cases cited to support their contention

514 that the plaintiffs' constitutional rights have not been violated, whereas later cases have increasingly attempted to protect persons summoned before investigative bodies.

We live in a far different era today than at the time the courts were faced with the facts in the cases cited by the Government.

We present to the Court a most serious question—a question dealing with the rights of man—the basic rights of man—his right to know his accuser, to have his chance to defend his good name in a proceeding characterized by fair play, instead of facing a proceeding of the nature here, faced by Lousiana citizens, registrars and all of this.

We submit the matter to the Court.

Judge WISDOM. Gentlemen, the Court appreciates the thoroughness with which the briefs and arguments have been prepared. We shall study the supplemental briefs very, very carefully.

I am sure I speak for my brothers when I say we have an absolutely open mind on all the important points made today.

Court will be adjourned.

[Reporter's Certificate to foregoing transcript omitted in printing.]

559 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
New Orleans, La., August 14, 1959.

In re Larche, et al. vs. Hannah, et al., Civil Action #7479.

Mr. TOMMY THOMPSON,
Clerk, United States District Court for the Western District of Louisiana, United States Post Office Bldg., Shreveport, Louisiana.

DEAR MR. THOMPSON: Please find enclosed originals in triplicate of plaintiff's reply brief for filing in the above captioned cause, pursuant to request of Court.

If you will be good enough to process same, it would be greatly appreciated.

Yours very truly,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC/le.
encl.

581 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
New Orleans, La., August 17, 1959.

Honorable JOHN M. WISDOM, *Associate Justice,*
Fifth Circuit Court of Appeals,
Honorable BEN C. DAWKINS, Jr.,
Honorable EDWIN F. HUNTER, Jr., *Justices,*
United States District Court,
Western District of Louisiana.

YOUR HONORS: There is a typographical error in our post-argument brief at the top of page 14 (our point number IV), 4th line, the word "constitutional" should be "unconstitutional".

Appreciating your kind co-operation in correction of this error and with kindest regards, I am,

Respectfully yours,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC/le.
cc: Hon. T. Fitzhugh Wilson, Hon. Wilson White.

590 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Opinion—October 6, 1959

[File endorsement omitted.]

For plaintiffs: Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana; William M. Shaw, Assistant Attorney General,

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State of Louisiana, Homer, Louisiana; M. E. Culligan, New Supreme Court Building, New Orleans, Louisiana; William P. Schuler, New Supreme Court Building, New Orleans, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Fred Jackson, Homer, Louisiana; Cameron C. Minard, Columbia, Louisiana; Richard H. Kilbourne, Clinton, Louisiana; J. Reuel Boone, Many, Louisiana; George M. Ponder, First Assistant Attorney General, State of Louisiana, Baton Rouge, Louisiana; Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana; John E. Jackson, Jr., New Supreme Court Building, New Orleans, Louisiana; N. Cleburn Dalton, 140 St. Louis Street, Baton Rouge, Louisiana; Albin P. Lassiter, Ouachita Parish Court House, Monroe, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Lester Hughes, Natchitoches, Louisiana; France Watts, Franklinton, Louisiana.

591 For defendants: Messrs. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; W. Wilson White, Assistant Attorney General, Department of Justice, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; A. William Mottolese, Attorney for Commission on Civil Rights; C. E. Clark, Legal Assistant to the Honorable Robert G. Storey; T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; Berl R. Bernhard, Attorney for Commission on Civil Rights.

Amicus curiae: Mr. Bruce Bennett, Attorney General for the State of Arkansas.

Three-judge court: Judge John Minor Wisdom, Circuit Judge; Judge Ben C. Dawkins, Jr., Chief Judge; Judge Edwin F. Hunter, Jr., District Judge.

592 HUNTER, Judge:

This case originated in the Shreveport Division of the Western District of Louisiana upon the filing of a complaint on July 10, 1959. Plaintiffs are registrars of voters in and for certain parishes in Louisiana.[1] The Commission on Civil Rights is a temporary agency of the United States, created by the Civil Rights Act of 1957, under Public Law 85-315, 85th Congress, U.S.C.A. 42: 1975, et seq. The Commission scheduled a hearing for July 13, 1959, in Shreveport, Louisiana for

[1] Hereinafter referred to as "Registrars".

the purpose of investigating allegations in writing (under oath or affirmation) that certain citizens were being deprived of their right to vote on account of race or color.[2] These allegations accuse the registrars, through their official acts, of having caused such deprivation, and summoned them to appear before the Commission. The subponeas also required the registrars to produce for inspection various voting and registration records within their custody and control.

The suit is against the Commission and its members. Its declared object is to stay the effectiveness of the Commission subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing. The registrars insist they are entitled to this relief because the Commission is
593 seeking to hold such hearing pursuant to rules of procedure which are ultra vires, and which deny to them traditional procedural safeguards. Moreover, the registrars assert that the rules of procedure adopted by the Commission violate their fundamental constitutional rights; and that the Act in its entirety is unconstitutional because it constitutes an unconstitutional delegation of power.[3]

Detailing their complaints, supported by sworn affidavits, the registrars allege that they were served with subpoenas and subpoenas duces tecum issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959; that they have not been informed of the nature of the complaints against them, nor have

[2] Under Section 104(a) of that Act the Commission is empowered and directed to: "(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based; * * *"

The Act also empowers the Commission, or any authorized subcommittee thereof, to hold such public hearings and act at such times and places as the Commission may deem advisable. Said Act also empowers the Commission to require the attendance and testimony of witnesses or the production of written or other matters.

[3] Registrars also contend that the procedural provisions of the Administrative Procedure Act should be applied. We cannot agree. The A.P.A. prescribes in section 7 (5 U.S.C. 1006), specific hearing procedures with respect to two processes; in section 4 (5 U.S.C. 1003) with respect to "rule making", and in section 5 (5 U.S.C. 1004) with respect to "adjudications." The Act contains no hearing requirements except where rule making or adjudications are involved. The Civil Rights Commission is performing neither function here.

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they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine, the written complaints filed against them, nor would it divulge the name or names of the secret complainants; that the rules under which the hearing is to be conducted specifically deny to registrars the right to cross-examine their accusers.[4]

On July 10, 1959 the case was heard by the Honorable Ben C. Dawkins, Jr., Chief Judge of the Western District of Louisiana. The matter was extensively argued and briefed. On July 12th Judge Dawkins granted a temporary restraining order and issued a rule on the Commission and its members to show cause why an interlocutory injunction should not issue.
594 Judge Dawkins, in issuing the temporary restraining order, did not intimate any opinion as to the constitutionality of the statute itself.[5] This three-judge court was convened to consider the constitutional attack.

The principal object and purpose of a three-judge federal court is to decide the constitutional validity of the Act of Congress sought to be enjoined. But where other issues are presented, as they are here, they too should be decided. The parties readily agree that this so and that all issues, both constitutional and non-constitutional, are before this court.[6]

THE CONSTITUTIONALITY OF THE ACT ITSELF

Complainants seek a declaratory judgment to the effect that the Act is unconstitutional because it is not appropriate legislation. Manifestly, this position cannot be sustained.

The Constitution and pertinent decisions of the Supreme Court make clear that Congress may, pursuant to power conferred upon it by Article 1 of the Constitution, legislate to secure the right to vote in federal elections. That power has been found in Article 1, Section 4. Ex Parte Siebold, 100 U.S. 371, 383 (1879); Ex Parte Yarbrough, 110 U.S. 651, 660 (1884); United States v. Mosley, 238 U.S. 383 (1915). It has been

[4] The truth of these facts is not contested.

[5] Judge Dawkins' opinion is made a part hereof by reference.

[6] California Water Supply Co. v. Redding, 304 U.S. 252 (1938); Davis v. Wallace, 257 U.S. 478, 482 (1922); Louisville and Nashville RR Co. v. Garrett, 231 U.S. 298, 304 (1913).

found in Article 1, Section 8, Clause 18, Ex Parte Yarbrough, supra, at page 658. It has been found in Article 1, Section 2, United States v. Classic, 313 U.S. 299, 316 (1941). And, as the Supreme Court noted in the Classic case, supra, at page 315:

"* * * since the constitutional command is without
595 restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of states."

It is equally clear that Congress may, pursuant to Section 2 of the 15th Amendment, legislate to prevent states and their officials from denying qualified persons the right to vote on account of race, color, or previous condition of servitude (Guinn v. U.S., 238 U.S. 347 (1915); In Re Wallace, 170 F. Supp. 63 (1959)). Similarly, Congress may, pursuant to Section 5 of the 14th Amendment, legislate to prevent states and their officials from enacting or enforcing statutes which deny equal protection of the laws.

Since Congress may legislate pursuant to its constitutional powers, and since it may investigate those objects upon which it may legislate,[7] and since it may delegate its investigative function,[8] the issue of the constitutionality of the acts in creating the Commission rests solely on the question of whether the action of Congress was, in fact, an implementation of its constitutional powers. The stated purposes of the act, its fair reading, and its overwhelming legislative history are proof positive that Congress did create the Commission pursuant to its Article 1 power, as well as to its powers under Sections 5 and 2 of the 14th and 15th Amendments,[9] respectively.

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[7] Watkins v. U.S., 354 U.S. 178 (1957).

[8] Endicott Johnson Corp. v. Perkins, 317 U.S. 501–510 (1943).

[9] (A). From the report of the House of Representatives Judiciary Committee (Report No. 291, 85th Congress, First Session) accompanying the bill which became, in pertinent part, the Civil Rights Act of 1957, it is manifest that Congress was legislating pursuant to its Article 1 power. Thus, that portion of the report designated "General Statement" notes: "The provisions of the Bill H.R. 6127 are designed to achieve a more effective enforcement of the rights already guaranteed by the Constitution and laws of the United States. This is particularly true with regard to the right of franchise in federal matters." (At page 5.)

Similarly, the "General Statement" portion continues at page 6: "With regard to the proposals involving the right to vote, the Federal Government has placed upon it by article 1, section 4, of the Constitution the authority

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596 We are mindful of the arguments repeatedly appearing in the registrars' brief to the effect that the power
597 granted to Congress to legislate is specifically limited by the Tenth Amendment. On its face the Tenth Amendment recognizes that certain powers are prohibited by the Constitution to the states, and therefore are not reserved to the states. One of these prohibitions is that no state may deny equal protection of its laws (14th Amendment). Another is that no state may deny the right to vote on account of race, color, or previous condition of servitude (15th Amendment). Still another provision of the Constitution specifically gives to Congress the power to legislate to secure the right of

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to regulate the manner of conducting elections and that authority is further supplemented by the 14th and 15th amendments."

There is further evidence that throughout its deliberations Congress was conscious of its Article 1 power. A clear exercise of that power is illustrated by the enactment of the present subsection (b) of section 1971, Title 42. In authorizing the federal government to prevent certain types of conduct by individuals, its terms are carefully limited to federal elections. And, as the House Report, supra, makes clear (at pages 11–13), Congress rooted this provision in its Article 1 power.

Finally, the history of the terms of the Act which prescribe the duties of the Commission reveals that it was created pursuant to the Article 1 power. Section 104(a) directs that the Committee shall:

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote *and have that vote counted* * * *" [Emphasis supplied.]

The italicized language was inserted by the House after the bill came out of Committee. Representative Hoffman, favoring the amendment, regarded its inclusion as crucial since Supreme Court had held it to be an integral part of the right to vote in United States v. Classic, supra (103 Cong. Rec. App. 4716). Thus, the Commission was directed to investigate deprivations of an aspect of the right to vote which had been enunciated in a case which involved the Article 1 power of Congress.

(B). The 14th Amendment. In the House debates Congressman Celler referred to the Act (103 Cong. Rec. 16088) as "* * * clear implementation of the 14th and 15th amendments." Similarly, in the words of the House Report, supra, at page 6:

"* * * the 14th amendment operates to prevent any State from enacting or enforcing a law which would abridge the privilege and immunity of a United States citizen and denying such a person the equal protection of the laws. *These two amendments expressly authorize Congress to enforce* [Emphasis supplied.]

"* * * the 14th and 15th amendments, both of which expressly confer upon the Congress the power to enforce them by appropriate regulations." (At page 13.)

Above all, the terms of the Act itself which relate to the Commission on Civil Rights demonstrate conclusively that Congress relied in part

qualified electors to vote in federal elections (Article 1, Sec. 2). So, we have here invovled the very powers which the Constitution says are not reserved to the states. The action here is not an invasion of state power merely because state voting and registration records are involved. The congressional power is complete in itself and may be exercised to its full extent. The investigation of alleged discriminatory practices is an appropriate step in the process of enforcing and protecting the right of qualified electors [10] to vote. The Act very definitely constitutes appropriate legislation.

598 THE RULES OF THE COMMISSION

The remaining pertinent and serious questions presented may be thus stated:

(1) Did Congress, in creating the Commission, specifically

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upon its powers under section 5 of the Fourteenth Amendment. By section 104(a) the Commission is directed to:

(2) study and collect information concerning legal developments constituting *a denial of equal protection of the laws under the Constitution;* and [Emphasis supplied.]

(3) appraise the laws and policies of the Federal Government *with respect to equal protection of the laws* under the Constitution. [Emphasis supplied.]

The inclusion by Congress of the italicized language manifests its reliance upon a concept found only in the 14th Amendment.

(C). The 15th Amendment. For example, the statement of Senator Bush at 103 Congressional Record, 13138: "That is the central purpose of this bill: to give meaning to the 15th amendment of the Constitution of the United States." See also the statement of Representative Celler in the House debates at 103 Congressional Record 16088.

[10] Under our constitutional system the qualification of voters is a matter committed to the states, subject to federal constitutional restraints prohibiting discrimination on account of race, color, sex, etc. But it is also true that the right of citizens to cast ballots, and have them counted in congressional elections, in accordance with applicable state laws, is a right secured by the federal constitution, and this right, unlike those carried by the 14th and 15th amendments, is secured against the actions of individuals as well as states. Article 1, Section 2 of the Constitution, in its provisions for the election of members of the House of Representatives, and the Seventeenth Amendment, in its provision for the election of Senators, provides that officials will be chosen "by the people". Each provision goes on to state that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous branches of the State Legislature." So, while the right of suffrage in federal elections is established in the Constitution, it is subject to the imposition of state standards which are not discriminatory (Lassiter v. Northhampton Election Bd., 360 U.S. 45, decided June 8, 1959.

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authorize it to adopt rules for investigations conducted under Section 104(a)(1) of the Act which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them? [11]

(2) If Congress did so authorize the Commission, is such authorization constitutionally permissible?

A careful reading of the several opinions in Groban,[12] Anonymous,[13] and Greene [14] convinces us that, as applied to the circumstances of this case, a serious constitutional issue is presented as to whether or not the rules adopted by this Commission, which deprived these plaintiffs of the right of confrontation and cross-examination and the right to be apprised of the complaints against them, are violative of the Constitution. There is no talismanic formula which can be applied. Every term, the Supreme Court examines the particular circumstances of particular cases in order to apply generalities which no one disputes.

Under the rationale of Greene, concurred in by eight justices,
a decision is not now required on the constitutionality of
599 these deprivations. It is sufficient that we find there to
be nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the

[11] Congress authorized the Commission to hold hearings (42 U.S.C. 1975 (d)-(f)). Congress enumerated specific mandates with respect to certain less fundamental procedural aspects (42 U.S.C. 1975(a)). Congress did not expressly authorize the Commission to deny to parties investigated the right of apprisal, confrontation, and cross-examination. The Commission assumed that they had the power to so do.

On their own, they adopted a rule denying to the parties investigated the right of cross-examination. The rule is 3(i) and reads as follows:

"Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

When informed that a hearing would be held to investigate charges against them, the registrars requested the right to see the accusations and affidavits filed against them. They also specifically requested the names of their accusers. The Commission refused both requests. The denial in each instance was by resolution (see Stipulation).

[12] In Re Groban, 352 U.S. 330, 77 S. Ct. 510, decided February 25, 1957.

[13] Anonymous v. Baker, 360 U.S. 287, June 15, 1959.

[14] Greene v. McElroy, 360 U.S. 474, decided June 29, 1959.

Act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination

Here, plaintiffs are being subjected to public opprobrium and scorn without fair and adequate opportunity to disprove the accusations against them. They are being subjected to the distinct likelihood of losing their jobs. They have been charged with, and are under investigation for, criminal conduct, and are to be examined in connection with offenses constituting federal and state crimes [15] in a hearing which
600 would completely fail to comport with traditional American ideas of fair play and would violate every element of natural justice.

The hearing sought to be restrained herein has been called pursuant to, and would be conducted in accordance with, rules which deny the right of confrontation. The registrars would be denied the right of cross-examination. They would be denied the right to be apprised of the identity of the person, or per-

[15] The Commission admittedly plans to hold the hearing to investigate written allegations that the registrars deprived certain citizens of their right to vote because of their color, race, religion, or national origin (see Affidavits of Registrars and Stipulation No 5). Accordingly, it must be admitted that the registrars are being examined in connection with their alleged commission of federal and state crimes, as follows, to wit:

18 U.S.C.A. 242

"Deprivation of rights under color of law"

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

LSA–R.S. 14:134

"Malfeasance in office"

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six month, or both."

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sons, making the charges against them, as well as the exact nature of the charge. These denials are the products of administrative decision not explicitly authorized by Congress. When we consider that this executive commission has been granted the right of subpoena to investigate allegations which, if true, would constitute the commission of crimes under state and and federal law, and that it is further required to make a report of its findings to the Chief Executive whose duty it is to enforce federal criminal laws,[16] we can reach no other conclusion than to say that if ever the traditional procedural safeguards, spoken of in Greene, were required to protect appears before a commission, then this is the instance. There, the Supreme Court, speaking through its Chief Justice, said:

"Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots.
661 They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., *Mattox* v. *United States,* 156 U.S. 237, 242–244; *Kirby* v. *United States,* 174 U.S. 47; *Notes* v. *United States,* 178 U.S. 458, 474; *In re Oliver,* 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *Ohio Bell Telephone Co.* v. *Commission,*

[16] 42 U.S.C. 1975(c)(b) requires the Commission to submit to the President a final and comprehensive report of its findings. Since the Commission is required to make this report to the President, the Chief Executive Officer of the land, it is fair to presume that a prime purpose of this report is to secure execution and enforcement of the laws presently in effect.

301 U.S. 292; *Morgan* v. *United States*, 304 U.S. 1, 19; *Carter* v. *Kubler*, 320 U.S. 243; *Reilly* v. *Pinkus*, 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-fascist Committee* v. *McGrath*, 341 U.S. 168–169. [Italics ours.]

* * * * *

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., the Japanese Immigrant Case, 189 U.S. 86, 101; Dismuke v. United States, 297 U.S. 167, 172; Ex parte Endo, 323 U.S. 283, 299–300; American Power Co. v. Securities and Exchange Comm'n, 329 U.S. 90, 107–108; Hannegan v. Esquire, 327 U.S. 146, 156; Wong Yang Sung v. McGrath, 339 U.S. 33, 49; Cf. Anniston Mfg. Co. v. Davis, 301 U.S. 337; United States v. Rumely, 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

And Mr. Justice Douglas, concurring in Peters v. Hobby, 349 U.S. 331, says:

"It, therefore, becomes necessary for me to reach the constitutional issue.

"Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor facilities of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. We have here a system where government with all

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its power and authority condemns a man to a suspect
602 class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government * * *."

The Supreme Court, in Greene, clearly and concisely charted a salutary and sensible course to be followed. Whether the procedures under the circumstances here are constitutionally permissible we do not decide. In accordance with the teachings of Greene, we decide only that in a hearing such as the one envisaged here, the Commission had no right to deny the accused Registrars the traditional rights of confrontation and cross-examination in the absence of explicit congressional authorization to do so.

In Greene the Supreme Court held these safeguards were not to be denied to one being investigated for alleged communistic associations and sympathies in the absence of explicit authorization from either the President or Congress. Surely, duly chosen state officials are entitled to the same protection, especially since no considerations of national security are involved. So is every citizen. In Greene, the government did not take the petitioner's job away from him, but he did lose his job as a result of a government finding to the effect that he was not a good security risk. If the Commission here finds the charges against the registrars are true, they are faced not only with public scorn and possible loss of their jobs, but also with probable indictment, arrest and prosecution.

We are impressed, but not persuaded, by the government's argument that the legislative history of the Act proves that the Commission acted at the implied direction of Congress in adopting the rules here under attack. This argument of implied direction cannot be sustained in the face of the following language from Greene:

"The issue, as we see it, is whether the Department of Defense has been authorized to create an industrial security
603 clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on the basis of fact determinations concerning their fitness for clearance made in proceedings in which

they are denied the traditional procedural safeguards of confrontation and cross-examination."

* * * * * *

"If acquiescence or implied ratification were enough to show delegation of authority to take actions within the area of questionable constitutionality, we might agree with respondents that delegation has been shown here."

* * * * * *

"Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use. * * * Such decisions cannot be assumed by acquiescence or nonaction. * * * They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized, * * * but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government, are not endowed with authority to decide them.

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., The Japanese Immigrant Case, 189 U.S. 86, 101; Dismuke v. United States, 297 U.S. 167, 172; Ex parte Endo, 323 U.S. 283, 299–300; American Power Co. v. Securities and Exchange Comm'n, 329 U.S. 90, 107–108; Hannegan v. Esquire, 327 U.S. 146, 156; Wong Yang Sung v. McGrath, 339 U.S. 33, 49; C. F. Anniston Mfg. Co. v. Davis, 301 U.S. 337; United States v. Rumely, 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

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Moreover, even if we were to ignore Greene, which we have no right to do and certainly will not do, we would still reject the government's argument of implication. The rejection by Congress of more extensive rules is neither explicit nor
604 implied authority to eliminate the fundamental safeguards under the circumstances here present. It is true that Congress refused to explicitly provide the safeguards, but it is equally true that there is nothing in the history of this legislation to show that Congress even considered writing into the Act any power of the Commission to do away with apprisal, confrontation, and cross-examination. The silence of Congress was apparently the product of thoughtful compromise. Some members of Congress positively wanted the fundamental safeguards spelled out, while others probably would have approved legislation specifically denying the accused these rights. Congress remained silent.

In Greene the Court specially found that the Defense Department had been authorized to fashion and apply an industrial clearance program but that the Department had not shown that either Congress or the President had explicitly authorized proceedings in which the accused was not afforded the safeguards of confrontation and cross-examination. In Greene the President, in general terms, had authorized the Department of Defense to create procedures to restrict the dissemination of classified information, and had apparently acquiesced in the elaborate program established by the Secretary of Defense which denied investigated parties of the rights of confrontation and cross-examination. The case for authorization there was stronger than here; e.g., in Greene, Part IV, § 2 of Executive Order 9835 specifically stated:

"* * * the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them, and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed * * *"

605 Justice Clark, dissenting, thought the authorization was specific:

"How the Court can say, despite these facts, that the Presi-

dent had not sufficiently authorized the program is beyond me, unless the Court means that it is necessary for the President to write out the Industrial Security Manual in his own hand." The Supreme Court, by an 8–1 majority, rejected the authorization as being insufficient.[17] We are not free to do otherwise here.

The conclusion is inevitable here that the burden is upon the government to show the "explicit action" by Congress authorizing the adoption of the rules which refuse to permit cross-examination, confrontation, and apprisal. In this case the government has made no attempt to point to any "explicit action" of authorization. Congress has made no such authorization, and absent such an explicit authorization, the rules in these particulars are clearly ultra vires.

The Equities

Proper voting practices are the cornerstone upon which our democratic balance is maintained. Discrimination upsets that balance. Moreover, discrimination clearly violates the Constitution. Steps designed to determine whether there has been discrimination are therefore of grave public interest and importance. When there are charges, as there are here,
606 which state that by one means or another the vote is being denied to a qualified person, the public interest will be served by learning all the facts. Certainly, the surest way of finding out all the facts is to hear from everybody, and the surest test of a witness's veracity is his confrontation and cross-examination.

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[17] Equally as decisive on the issue of explicit authorization in areas of doubtful constitutionality is Kent v. Dulles, 357 U.S. 116. There, Congress had enacted legislation requiring every passport application to "contain a true recital of each and every matter of fact which may be required by any rules" of the Secretary of State, and that requirement had to be satisfied "before a passport is issued to any person." In this context, the Secretary asked for, and petitioners refused to file, the required affidavits stating whether they then were or ever had been members of the Communist party. Thereupon, the Secretary refused to further consider petitioners' applications until such time as they filed the required affidavits. The scholars, the courts, the Chief Executive, and the Attorney General all agreed that the issuance of passports had for years been a "discretionary act" on the part of the State Department. The Supreme Court decided that in order for the Secretary to deny a passport to a Communist whose travel abroad would be inimical to our national security, Congress must so provide in explicit terms. The Court once again had construed very narrowly the delegated power to curtail or dilute substantial and fundamental rights.

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Government counsel seem to say in their briefs that their investigation is so very important that this Court should not hold that the traditional safeguards should be afforded the registrars. We in no way disagree with counsel for the government concerning the value they place on the precious right to vote. But search as we have, we find nothing inimical to the government's interest in giving to the registrars the rights they insist upon here. The ultimate goal of Congress in creating the Commission was to find out all of the facts—the truth, not just possibly prejudiced opinion—so as to be able to safeguard the free exercise of the voting right, subject to the legitimate power of the state to prescribe non-discriminatory and fair voting qualifications. Often in cases of this nature the Court must balance between individual and governmental interests. Here, we examine the record for that purpose and find no conflict. No better procedure exists for finding out the truth than to give the accused notice of the case against him and full opportunity to meet it. Hearings so conducted generate a feeling, so vital in a popular government, that justice is being done.

We have dealt at length with the immediate and irreparable damage that would be caused the registrars by forcing them to proceed without giving them their basic and traditional rights. No good purpose would be served by reviewing that phase of the case. Suffice it to say that we stand on what we have said and we agree with Judge Dawkins' original opinion—that these registrars are faced with immediate and irreparable injury. What damage, what injury, will the Commission suffer by giving to these registrars their traditional safeguards of due process of law, and by affording them
607 the tenets of natural justice? In our humble opinion, all the Commission will suffer is perhaps a little inconvenience. It may take them three days rather than one to get the facts. How best can they perform the major task of "finding out all the facts" than to give the persons investigated the basic legal safeguards. We have searched in vain throughout the extensive briefs filed by the government in an effort to find out what irreparable damage, or what damage at all, could be done the Commission by prohibiting them from holding a hearing pursuant to these "ultra vires" rules and resolutions.

We do find in various parts of the government's briefs several statements or intimations as to damage. It was suggested that irreparable damage will be suffered because the Commission will expire in November. The recent action of Congress in extending the life of the Commission dispels this argument.

The government also suggests that if copies of the accusations and the names of the accusers were furnished the registrars it might result in the accusers being prosecuted for perjury. That is a strange argument—if one person makes a written allegation under oath that another has committed a crime and this oath turns out to be untrue, the public interest does not require that the government protect the perjurer. The government also argues that the Court should take judicial notice of the possible pressure to which persons making complaints in this field are subject under present circumstances. This Court does not know of a single instance where any such pressure has actually been brought. Some honest, sincere, and well-meaning people really believe this, but we are not going to assume (in the total absence of evidence) that the people of this State will be guilty of such a practice. Finally, the government argues that there is no point in telling these people what they did because they are the registrars and they *know* what they did. This contention assumes the reg-
608 istrars' guilt, an assumption which itself does violence to the American concept of justice—that all persons accused of crime are presumed to be innocent until proven guilty by competent evidence.

Insofar as the right of cross-examination is concerned, the government offers no reason why this should be denied. They merely say that they do not have to give it because congressional committees do not, and that Congress did not intend them to do it.

The Commission has authority to hold public hearings on vital public issues. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult questions facing our country. Such a study, such an investigation, fairly conducted, will tend to unite responsible people in a common effort to solve these problems. Investigation and hearings will bring into proper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a

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course of progress to guide us in the years ahead, but a fact finding investigation conducted as this one is proposed to be conducted can result only in misunderstanding, suspicion, hostility, and unneeded bitterness.

Natural justice would not require confrontation, apprisal, and cross-examination in every hearing of the Commission, but only in instances where, as here, the record makes it abundantly clear that those being investigated are accused and suspected of criminal conduct.

Believing as we do that the procedures and the rules of the Commission in the particulars heretofore discussed are ultra vires and threaten the registrars with immediate and irreparable damage, and believing further that the interests of the government, the public, and the Commission will best be served by the holding of a full and fair hearing wherein all ac-
609 cused of crimes are given a fair chance to develop all the facts, we have but one course to take—that is to dismiss the government's motion for summary judgment and grant the prayer for an injunction, in accordance with this opinion.

It is so ordered on this the 6th day of October, 1950.

JOHN MINOR WISDOM, Circuit Judge (dissenting).

610 *Dissenting opinion*

WISDOM, Dissenting:

I concur in the holding that the Act is constitutional and that the Administrative Procedure Act is inapplicable. I feel compelled, however, to dissent from the holding that under Greene v. McElroy the rules of the Commission are ultra vires.

I

The Commission's rules may be inadequate, in terms of traditional safeguards accorded a defendant in a criminal trial, but they are the rules Congress authorized for hearings by the Civil Rights Commission.

This case differs radically from Greene v. McElroy. Here, Congress took pains to set out in the Act, in its delegation of authority, mandatory rules of procedure to be followed by the Commission. The Commission's rules follow the language of the statute or are based on the intent of the statute.[1] Thus, on the important issue of the right of cross-examination, the Commission rule provides: "Interrogation of witnesses at

Footnotes to dissenting opinion appear on page 265.

hearings shall be conducted only by authorized staff personnel." [2] This is based on the statutory provision, Section 102 (c): "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights." The limitation of the activities of a lawyer to giving advice to his client, is just a way of saying that the lawyer (or his client) cannot cross-examine an adverse witness.

A central issue in the controversy over civil rights legislation was whether witnesses should have the traditional safeguards of notice, confrontation, and cross-examination. The 1956 Civil Rights Bill, H.R. 627, as reported by the House Judiciary Committee, contained no special rules of procedure. H. Rep. No. 2187, 84 Cong. 2d Sess. It was amended on the floor of the House by the addition of elaborate safeguards which Representative Dies of Texas proposed. 102 Cong. Rec. 13542, 13548. This amendment required notice of the subject of the inquiry and confrontation, and allowed limited cross-examina-
611 tion. The bill passed the House, but no action was taken on it in the Senate. In 1957 several bills were introduced containing the same procedural provisions as the 1956 bill, as amended. One of these was S. 83, the subject of Senate hearings in 1957.[3] The position of the Department of Justice, as stated by the Attorney General, was that "it would be a mistake to make it the vehicle for experimenting with new rules". Hearings, Senate Judiciary Committee, 85 Cong., 1st Sess., p. 14. In the House hearings on the 1957 Civil Rights proposal Senator, then Representative, Keating asked Attorney General Brownell if the Department would object to the Committee inserting in the bill a provision "similar to those set up in the rules of the House for the conduct of congressional committees". General Brownell stated that the Department had no objection to such rules of procedure. H.R. 6127, adopted into law as the Civil Rights Act of 1957, incorporated the House "Fair Play Rules" [4] as Section 102 of the Act.[5]

The action of Congress in refusing to adopt a particular bill and adoption of another bill is often an unreliable guide to congressional intent. But the circumstances in which H.R. 6127 became law, rather than S. 83 or H.R. 627, make it clear that Congress, after careful deliberation, made a choice of procedures. Congress rejected the traditional safeguards accorded a

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defendant in a criminal trial and accepted the House "Fair Play Rules".

The House "Fair Play Rules" were drawn for the conduct of congressional investigating committees. They were the indirect product of innumerable legal articles, judicial dicta, and editorials.[6] They were the direct product of careful study.[7] It is safe to say that when the House "Fair Play Rules" were adopted as Section 102 of the Civil Rights Act of 1957 every member of the House and Senate regarded that action as an explicit declaration that Congress affirmatively rejected rules extending to witnesses the rights of notice, confrontation, and cross-examination; that, instead, Congress authorized and directed the Civil Rights Commission to follow its more limited "Fair Play Rules".

This background distinguishes the case from Greene v. McElroy. There, the majority's reasoning was the President and Congress would not have delegated to the Department of Defense the power to deprive a man of his job as a result of a hearing in which he has no right of confrontation or
612 cross-examination, without including in the delegation express authorization to by-pass the traditional due process safeguards. Here, Congress expressly authorized the by-pass.

II

I therefore reach the issue of the constitutionality of the procedure.

A hearing subjecting a subpoenaed witness to public opprobrium, loss of reputation, loss of a job, and possible state and federal prosecution based on testimony brought out at the hearing, carries sanctions no less severe than a criminal trial. Fundamental fairness would seem to require that such a witness have the opportunity to assert the rights of notice, confrontation, cross-examination, and other due process safeguards. No court however has gone that far.

Mr. Justice Clark, the only member of the Supreme Court who reached the constitutional issue in Greene, stated: "[T]he Court has long ago and repeatedly approved administrative action where the right of cross-examination and confrontation were not permitted." Without exception, the courts have drawn a distinction between investigative and adjudicative proceedings. Witnesses in investigative hearings do not have

the constitutional rights of a witness in an adjudicative hearing. The Fifth Amendment gives a witness protection in an investigation; the opportunity to assert all due process rights in any later adjudicative proceeding is a sufficient protection.[8] In re Groban, 1957, 352 U.S. 330, 77 S. Ct. 510, 1 L. Ed. 2d 376; Bowles v. Baer, 7 Cir., 1954, 142 F. 2d 787. Norwegian Nitrogen Prod. Co. v. United States, 1932, 288 U.S. 294, 53 S. Ct. 350, 77 L Ed. 796.

In Groban a majority of the Supreme Court went very far indeed in denying the right to counsel. An Ohio statute, authorizing the State Fire Marshal to investigate the cause of fires, conferred broad powers on the investigating officer. He could hold the investigation in private, exclude counsel, punish witnesses who refuse to testify by summarily committing them to jail, and, if he believed the evidence would warrant a conviction for arson or a similar crime, he could arrest the witness after the investigation. The appellants, who were called upon to testify concerning the cause of a fire at their place of business, refused to testify in the absence of counsel. They
613 were committed to jail. In a habeas corpus proceeding, they contended that they had a constitutional right to counsel under the due process clause of the fourteenth amendment. The court held, five to four, that appellants had no constitutional right to counsel in giving testimony before an investigative body that does not adjudicate legal rights and responsibilities. If Groban was not entitled to due process, no witness is entitled to due process in an investigation.

Taking the law as it is, the Commission's rules are constitutional.

III

The rub in this case comes from the Act itself. It comes from the incongruity of a legislative commission of inquiry investigating specific complaints against individuals accused of crimes.[9] To my mind, the creation of such a commission is of questionable legislative propriety, at best. It carries grave danger of legislative usurpation, at worst.

The investigation of specific violations of the law is for grand juries, not legislative commissions. With all deference to Congress, a commission, constituted to investigate a broad problem of national interest, has no business holding hearings that must inevitably develop into legislative trials of individ-

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uals. When a subpoenaed witness accused of a crime may be subjected to trial by exposure, a fact-finding determination and punishment, he should have the same rights of notice, confrontation, and cross-examination, and all the other hard-earned rights embodied in due process, that any one accused of breaking the law is entitled to when he is tried by a jury before a judge. The Commission does not formally adjudicate guilt or impose a formal sentence, but an individual against whom a complaint is made to the Commission may be exposed to all the hardships of a trial and to punishment in many forms.

The House "Fair Play Rules" are a step in the proper direction—for congressional committees. Procedures suitable for Congress' own committees, however, are less than adequate for a trial by an autonomous commission to which Congress has delegated its power of inquiry.

The high purposes animating the creation of the Civil Rights Commission do not diminish the inherent dangers in legislative trials. They simply obscure the dangerous means used to attain the ends of the legislation.

These, however, are considerations for Congress.[10] On
614 the law, unless the minority view in Groban should prevail, the Act is constitutional, the rules authorized.

615 *Footnotes to dissenting opinion*

[1] See Appendix A and Appendix B.

[2] This is the rule universally followed by committees of the House and Senate. It permits a form of cross-examination: submission of written questions to be put to the witness by the Chairman—for whatever that is worth as cross-examination.

[3] See Appendix C.

[4] Amendment to Rule XI(25) of the Rules of the House of Representatives. Adopted March 23, 1955, 101 Cong. Rec. 3569–85; House Resolution 151, Rules and Manual, United States House of Representatives, 1959, section 735(1)–(q).

[5] Section 102(a) through 102(i) of the statute is identical with the House "Fair Play Rules".

[6] For a discussion of the various proposals for a code of procedure before congressional committees, see Maslow, Fair Procedure in Congressional Investigations: A Proposed Code, 54 Cal. L. Rev. 839 (1954). For the code proposed by the American Bar Association, see 40 Am. Bar Ass'n Journ. 900 (1954). See the following, some before and some after adoption of the Fair Play Rules, some dealing directly with the procedure before congressional committees and some dealing with the rights of witnesses generally in hearings before investigative or administrative bodies: Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev.

153 (1926); Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. Rev. 691 (1926); Herweitz and Mulligan, The Legislative Investigating Committee, 33 Cal. L. Rev. 1 (1933); Morgan, Congressional Investigations and Judicial Review; Kilbourn & Thompson Revisited, 37 Cal. L. Rev. 556 (1949); Davis, The Requirement of Opportunity to be Heard in the Administrative Process, 51 Yale L. Journ. 1091 (1942); Llacos, Rights of Witnesses Before Congressional Committees, 33 Bos. U. L. Rev. 337 (1953)); Symposium on Legislative Investigations: Safeguards of Witnesses, 29 Notre Dame Law., 157 (1954); Keating, The Investigating Power of Congress, 14 Fed. Bar Jour. 171 (1954); Kefauver, A Code of Conduct for Congressional Investigations, 8 Ark. L. Rev. 369 (1954); Chase, Improving Congressional Investigations, 30 Temp. L. Q. 126 (1957); Davis, Requirements of a Trial-Type Hearing, 70 Harv. L. Rev. 193 (1956); McKay, The Right of Confrontation, Wash. U. L. Q. 122 (1959). See the following recent notes and comments: Due Process and the Right to Counsel, 33 St. John's L. Rev. 67 (1957); The Civil Rights Act of 1957 and Contempt of Court, 48 Cornell L. Q. 661 (1958); Constitutional Limitations on the Legislative Power of Investigations, 7 Buffalo L. Rev. 267 (1958); Representation by Counsel, 58 Cal. L. Rev. 395 (1958). See also Barth, Government by Investigation (Viking Press, N.Y. 1955) and Taylor, Grand Inquest (Simon & Schuster, N.Y. 1955).

[7] In 1954 both houses of Congress held extensive hearings on the matter of committee procedures. Hearings before the Subcommittee on Legislative Procedure of the House Rules Committee, Legislative Procedure, 83d Cong., 2d Sess. (1954); Hearings before the Subcommittee on Rules of the Senate Rules and Administration Committee, Rules of Procedure for Senate Investigating Committees, 83d Cong., 2d Sess. (1954). See also Report of Senate Committee on Rules and Administration to accompany S. Res. 17, Rules of Procedure for Senate Investigating Committees, 84th Cong., 1955.

[8] Proponents of the legislation emphasized repeatedly: "The Commission created by the proposal is purely investigatory and empowered only to make recommendations". H. Rep. No. 291, 85th Cong. 1st Sess., p. 6.

[9] Section 104(a)(1) of the Act (Duties of the Commission) provides: "The Commission shall—(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

[10] The inclusion in the body of the statute of mandatory rules of procedure is unique in legislation setting up an investigatory commission. This, and the provision requiring application to a court for enforcement of process indicate congressional sensitivity to the problem.

616 APPENDIX A

Rules of Procedure of the Commission

Sec. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

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(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness

upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

617 (k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

APPENDIX B

In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85–315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 105(f) of Public Law 85–315, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission or of any subcommittee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at which at least a quorum of four members is present.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission by the Chairman or by the Chairman upon the request of a member of the Commission.

(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased

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by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission
618 members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

APPENDIX C (S. 83)

Rights of Persons Adversely Affected by Testimony

(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public

hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by

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the Commission to disclose his sources of information, unless to do so would endanger the national security.

620 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Order on opinion

Nov. 9, 1959

[File endorsement omitted.]

For reasons assigned in the Court's written opinion of October 6, 1959,

It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiff registrars, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

This injunction does not prohibit all hearings pursuant to Public Law 85–315, 85th Congress, 42 U.S.C.A. 1975, et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

Thus done and signed in Chambers on this the 9 day of November, 1959.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.
Edwin F. Hunter, Jr.,
EDWIN F. HUNTER, Jr.,
United States District Judge.

621 In the United States District Court for the Western District of Louisiana

Civil Action No. 7479

MARGARET M. LARCHE, ET AL., PLAINTIFFS

v.

JOHN A. HANNAH, ET AL., DEFENDANTS

Notice of appeal to the Supreme Court of the United States

Filed Nov. 12, 1959

[File endorsement omitted.]

I

Notice is herey given that John Hannah, et al., the defendants above named, hereby appeal to the Supreme Court of the United States from the order granting an injunction, entered in this action on November 9, 1959.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II

The Clerk will please prepare a transcript of the entire record in this cause, for transmission to the Clerk of the Supreme Court of the United States.

III

The following questions are presented by this appeal:

1. Whether voting registrars subpoenaed to appear as witnesses at a hearing of the Commission on Civil Rights have a statutory or constitutional right (a) to conduct their own interrogation of other witnesses at the hearing or (b) to receive advance notice of (1) the names of persons who had allegedly asserted to the Commission that the registrars had deprived others of the right to vote on account of race or color, and (2) the contents of such assertions.

622 2. Whether appellees' complaint sufficiently alleged a legally cognizable irreparable injury or threat of irreparable injury so as properly to invoke the equitable power of the District Court to grant injunctive relief.

3. Where Commission subpoenas could be enforced against appellees only through application by the Attorney General

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to a District Court for an enforcement order under section 105(g) of the Civil Rights Act of 1957, 42 U.S.C. 1975d(g), and no application for enforcement had been made, whether appellees' suit for injunctive relief was premature.

4. Whether the Civil Rights Act of 1957, 42 U.S.C. 1975a *et seq.*, and the Rules of the Commission, provided appellees with an administrative remedy which rendered their suit for injunctive relief premature.

Joseph M. F. Ryan, Jr.,
JOSEPH M. F. RYAN, Jr.,
Acting Assistant Attorney General,
T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney,
Attorneys for John A. Hannah, et al.,
Appellants.

[Certificate of service omitted in printing.]

624 *Docket*

Card Index 7479

Shreveport, title of case	Attorneys
MRS. MARGARET M. LARCHE, Individually and in her capacity as REGISTRAR OF VOTERS in and for the Parish of Morehouse, et al* (*& 16 other Parish Registrars).	For Plaintiff: See Attached Sheet.
2 VS.	
JOHN A. HANNAH, Individually and as a member of the COMMISSION ON CIVIL RIGHTS, et al* (& the 5 other members thereof).	For Defendant: See Attached Sheet.
T. 28, Secs. 1331, 1332, 2282, 2284 USC & T. 42 Sec. 1985 USC & Sec. 2201. Basis of action: Suit for Declaratory judgment that Public Law 85-315, 85th Congress is unconstitutional; & for restraining order & injunction, temporary & permanent, enjoining Commission from holding hearing & requiring production of documents; & NJ for constitution of 3 Judge Court.	

Date	Plaintiff's account	Received	Disbursed
1959			
7-10	Jack P. F. Gremillion	$15.00	
7-16	Treas of US T-3		$15.00

Abstract of costs

To whom due	Amount
1959	
7-10, Clerk's	$15.00
7-13, USM	9.00
7-17, USM	7.20
7-22, USM	2.00
8-27, USM	2.00
11-12, Notice of Appeal	5.00

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1959 *Shreveport*

7–10—Original complaint with attached exhibits, filed.

7–10—Original summonses (6), with copies for service, issued.

7–10—This case & No. 7480 came on for hearing on applications by plaintiffs for temporary restraining orders, counsel for defendants having only a few minutes before received copies of the cases, it was ordered that Court recess for one and one half hours. At 3:30 PM, hearing was resumed, applications for temporary restraining orders argued, orally, brief filed on behalf of defendants and taken under advisement. The Court announced that a ruling would be made on the afternoon of July 12, 1959.

7–12—Memorandum of authorities supporting issuance of temporary restraining order and/or temporary injunction, filed. (Also applies to No. 7480).

7–12—Pretrial Exhibits & pertinent statutory provisions & Pltfs'. Pretrial Brief filed.

7–12—Opinion of Judge Dawkins granting applications for temporary restraining orders, filed; together with temporary restraining order enjoining defendants from holding hearings, etc. & directing them to show cause at Shreveport, La. on 7–22–59 at 9:30 a.m. why a preliminary or interlocutory injunction should not be granted.

7–12—Writs of temporary restraining order & rules to show cause, with copies for service & attached copy of restraining order, issued & delivered to Marshal.

7–12—Four copies of 7–12–59 opinion delivered to Mr. Bernhard for the Commission & to Mr. Lassiter for plaintiffs in No. 7479; and one copy delivered to Mr. Shaw for plaintiffs in No. 7480.

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7–12—Entire record delivered to Judge Dawkins at his request. Clerk advised that record was being sent to Judge Joseph C. Hutcheson.

7–13—Marshal's return on summonses, (6) filed: Robert C. Storey served in person on 7–10–59; Other five summonses returned unexecuted—See returns for details.

7–13—Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Robert G. Storey, John S. Battle & George M. Johnson each served in person on 7–12–59.

7–14—It was ordered that T. Fitzhugh Wilson & others be enrolled as counsel for Defts; & on motion of Berl I. Bernhard, it was ordered that he be withdrawn as counsel for defendants. Counsel for defendants moved orally to require plaintiffs to post a $10,000.00 bond in connection with the issuance of a temporary restraining order, brief by plaintiffs in opposition thereto filed, oral testimony adduced, submitted and ordered that application for bond be denied as to each case. (BCDJF)

7–15—Order of Joseph C. Hutcheson Jr., Chief Judge, Fifth Circuit, appointing John M. Wisdom, & Edwin F. Hunter, Jr. to serve with Judge Dawkins, Jr. as a Three Judge Court, filed. Certified copies thereof mailed by Judge Dawkins to Judges Wisdom & Hunter.

7–17—Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Rev. Theodore S. Hesburg, Doyle E. Carlton, and John A. Hannah, each served 7–13–59.

7–17—Telegram from Atty. Gen. State of Arkansas, and Judge Dawkin's reply thereto granting him permission to file amicus curiae brief, filed.

7–22—Motion by Pltfs. & order continuing in force & effect temporary restraining order to 9:30 AM 8–1–59, as well as the rule to show cause, which is continued to 8–7–59 at 9:30 A.M., filed. Certified copy thereof delivered to Marshall to be served on U.S. Attorney.

7–22—Marshal's return on service of 7–22–59 order filed: Defts. served thru US Atty. on 7–22–59.

7-28—Memorandum by plaintiffs outlining questions & scope of inquiry which the three Judge Court is authorized to consider and dispose of, filed. Copies thereof mailed by Clerk to Judge Wisdom & Judge Hunter.

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7-29—Carbon copy of stipulation in and between complainants and defendants, filed with Clerk by counsel for plaintiffs.

7-29—Trial Brief on behalf of complainants, filed. Signed copy thereof mailed by Clerk to Judges Wisdom & Hunter.

7-30—Court Reporter's Transcripts of Precedings (2 documents) of July 10 and July 13, 1959, filed.

7-31—Motion by Pltfs. & order continuing in force & effect temporary restraining order to 9:30 AM 8-7-59, filed. (BCDJR) Certified copy thereof delivered to Marshal for service on U.S. Attorney.

7-31—Defendants' answer to plaintiff's complaint and the Rule to Show Cause filed. Copy thereof mailed to Judges Wisdom & Hunter.

7-31—Defendants' brief in support of answer to Rule to Show Cause, filed. Copy thereof mailed to Judges Wisdom & Hunter.

8-1—Affidavits of nine (9) Registrar plaintiffs and affidavit of Jack P. F. Gremillion, with attached exhibits filed by plaintiffs in support of their motion for preliminary injunction. Copies thereof mailed to Judge Wisdom & Judge Hunter.

8-4—Brief of the Attorney General of Arkansas, Amicus Curiae, filed. Copies thereof mailed by Clerk to Judges Wisdom & Hunter.

8-5—Affidavits of six (6) Registrar plaintiffs filed on behalf plaintiffs in support of their motion for preliminary injunction. Copies thereof mailed to Judge Wisdom & Judge Hunter.

8-7—Stipulation in and between complainants and defendants, signed by counsel for each side, with attached exhibits, filed. Copies thereof delivered to Judges Wisdom & Hunter.

8-7—This case & No. 7480 Came on for hearing on Rule to Show Cause Why A Preliminary Injunction should not issue; on motion by Deft. for summary judgment

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in No. 7480; as well as trial on the merits as to each case, on the question of constitutionality; No. 7479 being heard and tried by the Three Judge Court and No. 7480 being heard and tried by Judge Dawkins, Jr., only. Counsel for plaintiffs filed three separate briefs. The Court announced that, by agreement of counsel, the restraining orders will lapse at the end of this hearing, the Govt. having agreed that the Commission will not attempt to have any hearing on Louisiana matters until decision is handed down in this case. Oral stipulation was dictated into the Record, as to Case No. 7479; and a written stipulation was filed by and between counsel in No. 7480. Counsel for Pltf. filed in evidence the entire record as thus made up. Oral argument was had after which it was ordered that both cases be submitted and taken under advisement on briefs to be filed by each side within 10 days. (JMW: EFHJR: BCDJR)

8–14—Legislative History Material received by Clerk from counsel for defendants. Duplicate copies thereof mailed by Clerk to Judges Hunter and Wisdom.

8–14—Defendants' supplemental memorandum, filed. Copies thereof mailed by Clerk to Judges Wisdow & Hunter.

8–15—Plaintiffs' post argument brief, requested by the Court, filed. Copies thereof mailed to Judges Wisdom & Hunter.

8–17—Entire record and docket sheet delivered to Judge Dawkins.

8–18—Supplemental brief amicus curiae filed on behalf of the Attorney General of Arkansas. Copies thereof mailed to Judges Wisdom & Hunter. Original given to Judge Dawkins.

8–26—Court Reporter's transcript of 8–7–59 proceedings filed.

8–27—Marshal's return on Motion by plaintiff to continue in effect rest. order served July 31, 1959 at 10:15 A.M., on T. F. Wilson, U.S. Attorney.

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10–7—Opinions (majority and dissenting) of Three Judge Court, as follows, filed: Majority (Hunter & Dawkins) dismissing Govt's. motion for summary judgment and granting prayer for an injunction in ac-

cordance therewith; Dissenting Opinion: (Wisdom) Holding that the Act & the Commission's rules are constitutional. Copies thereof mailed to U.S. Attorney and to Atty. Gen. of State of La. by Judge Hunter.

11-9—Judgment signed by Ben C. Dawkins, Jr. and Edwin F. Hunter, Jr. in accordance with majority opinion filed 10-7-59 enjoining and restraining Defts., agents, etc. from conducting the proposed hearing in Shreveport, La., filed. Notice of entry given to counsel for each side thru US Attorney and Attorney General of State of Louisiana in the form of a certified copy of said judgment.

11-12—Defendants' Notice of Appeal which contains designation of record on appeal and statement of questions presented by said appeal, filed.

11-18—Request by counsel for defendants in letter from, dated November 17, 1959, that Clerk of this Court transmit to Clerk of Supreme Court the original of the record in this case, filed.

11-19—Motion by defendants for an order directing that the original record be transmitted to the Supreme Court in lieu of copies, filed.

11-19—Order of Court granting motion filed by defendants this date re transmission of original record, filed. (BCDJR)

628 PLAINTIFFS ATTORNEYS

Jack P. F. Gremillion, Attorney General, State of La., 2201 State Capitol, Baton Rouge, La; George M. Ponder, 1st Asst. Atty. Gen., State of La., 2201 State Capitol, Baton Rouge, La.; M. E. Culligan, New Supreme Court Bldg., New Orleans, La.; John E. Jackson, New Supreme Court Bldg., New Orleans, La.; William P. Schuler, New Supreme Court Bldg., New Orleans, La.; N. Cleburn Dalton, 140 St. Louis St., Baton Rouge, La.; W. Scott Wilkinson, Beck Bldg., Shreveport, La.; Frank J. Looney, Sr., Shreveport, La.; Louis H. Padgett, Bossier City, La.; Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, La.; Fred Jackson, Homer, La.; William Shaw, Homer, La., Attorney for Mrs. L. L. Linton; Thompson L. Clarke, St. Joseph, La.; Cameron C. Minard, Columbia, La.; Lester Hughes, Natchitoches, La.; Richard N. Kilbourne, Clinton, La.; France Watts, Franklinton, La.; J. Ruel Boone, Many, La.; Ferdinand A. Cashio, 1313 Centenary Boulevard, Shreveport, La.; Ragan Madden, District Attorney, Ruston, La.; Edwin L. Blewer, District Attorney, Caddo Parish, Shreveport, La.

For amicus curiae: Bruce Bennett, Attorney, State of Arkansas, Little Rock, Ark.

629 DEFENDANT'S ATTORNEYS

C. E. Clark, Legal Assistant to Hon. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; A. William Mottolese, Staff Director, Commission on Civil Rights; T. Fitzhugh Wilson, U.S. Attorney, Box 33, Shreveport, La., for the Commission and each of its individual members; Ben Brooks; D. Robert Owen; A. Wilson White, Asst. Atty. Gen., Washington, D.C.; Joseph M. F. Ryan, Jr., Actg. Asst. Atty. Gen., Civil Rights Division, Dept. of Justice, Washington 25, D.C.

630 In the United States District Court for the Western District of Louisiana, Shreveport Division

[File endorsement omitted.]
[Title omitted.]

Motion for an order directing that the original record be transmitted to the Supreme Court in lieu of copies

Filed Nov. 19, 1959

Defendants in this cause hereby respectfully move this Court to enter an order directing the original record to be transmitted to the Supreme Court in lieu of copies.

As reasons for this motion defendants show as follows:

1. Defendants have noted an appeal from the order entered November 9, 1959, and have designated the entire record for transmission to the Supreme Court. The record is voluminous, and preparation of copies would be time-consuming and would entail considerable effort and expense.

2. Defendants intend to take all steps necessary to expedite the hearing of this case in the Supreme Court. Because of the Civil Rights Commission's limited life, the issues should be resolved by that Court as quickly as possible.

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3. Under Rule 12(4) of the Revised Rules of the Supreme Court, 28 U.S.C., the original papers may be inspected by the Supreme Court in lieu of copies, if the presiding judge deems such inspection "necessary or proper". For reasons hereinbefore stated, such inspection is "necessary" and "proper".

Joseph M. F. Ryan, Jr., D.K.,
JOSEPH M. F. RYAN, Jr.,
Acting Assistant Attorney General,
Civil Rights Division,
Department of Justice, Washington, D.C.

631 T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney,
Western District of Louisiana,
Shreveport, Louisiana.

[Certificate of service omitted in printing.]

632 In the United States District Court for the Western District of Louisiana, Shreveport Division

[File endorsement omitted.]
[Title omitted.]

Order directing transmittal of original record

Nov. 19, 1959

Appellants having designated the entire record in this case for use on appeal, and having filed with this Court a motion for an order directing that the original record be transmitted to the Supreme Court in lieu of copies, and it appearing to the Court that transmission of the original papers will avoid unnecessary expense and expenditure of time, the Clerk is hereby directed to transmit the original record to the Supreme Court in lieu of copies, such original record to be returned to this Court after disposition of the appeal.

Thus done and signed this 19th day of November, 1959, at Shreveport, Louisiana.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.

633 [Clerk's certificate to foregoing transcript omitted in printing.]

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634 Supreme Court of the United States

Nos. 549 and 550, October Term, 1959

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.; AND JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

Order on motion to advance

December 7, 1959

Upon consideration of the motion to advance filed by the Solicitor General wherein he states that his brief on the merits will be filed on or before December 15, 1959, the Court directs that on or before Wednesday, January 13, 1960, the appellees shall file any motion or motions responsive to the statement as to jurisdiction and on the merits of the case, the respondents shall file any brief relating to the granting or denying of the petition for writ of certiorari and on the merits of the case, and the cases are set for oral argument on Monday, January 18, 1960, on the petition for writ of certiorari, the jurisdiction on appeal, and on the merits of the cases.

The cases are consolidated for the purpose of this argument and a total of four hours is allowed.

U.S. GOVERNMENT PRINTING OFFICE: 1959